

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 Friends of Skagit County, June Kite, and
3 Evergreen Islands

Case No. 07-2-0025c

4 Petitioners,

FINAL DECISION AND ORDER

5
6 v.

7 Skagit County,

8
9 Respondent.

10
11 And

12 The City of Anacortes,

13
14 Intervenor.
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16
17 **I. SYNOPSIS OF DECISION**

18 In this Order the Board finds that while Petitioner Evergreen Islands (EI) has standing to
19 raise issues regarding LAMIRDS and Petitioner Evergreen Islands has standing to raise
20 issues regarding the County's urban/non-urban growth allocation policy, CP Policies 3A-1.1,
21 3A-2.2, non-urban growth allocations (Issue 5), the Long CaRD policy in this case,
22 Petitioners lack standing to bring the remaining issues in this case.
23

24 The Board also finds in this Order that EI has failed to carry its burden of proof to
25 demonstrate that Policies 3C-1.8, 3C-1.9(c), 12A-4.1(c), 12A-4.2(f), and 12A-4.2(g)
26 regarding the increase of densities in Type I Limited Areas of More Intense Development
27 (LAMIRDs) violate the GMA.
28

29 However, the Board finds that SCC 14.16.140(3) which allows new "caretaker quarters", a
30 form of residential development within Type II LAMIRDs is in violation of RCW
31 36.70A.070(5)(d)(ii).
32

1 The Board further finds in this Order that CP Policies 3C-1.4 and 3C-2.1 are not supported
2 by consistent development regulations as required by RCW 36.70A.040. Policies 3C-1.4
3 and 3C-2.1 on rural commercial and industrial designations are in conflict with SCC
4 14.16.300(4), 14.16.310(4) and 14.16.320(4) which allow new more intensive commercial
5 and industrial uses in the Rural Intermediate, Rural Village Residential, and Rural Reserve
6 by special use permit.
7

8 However, EI has not demonstrated that CP Policy 3C-2.1, by allowing new industrial uses in
9 designated commercial LAMIRDs, is in violation of RCW 36.70A.070(5). Furthermore, EI
10 has not demonstrated why CP Policy 3C-2.12, (regarding rural centers) fails to comply with
11 the GMA by failing to limit new residential uses to one unit per five acres in Rural Center
12 designations.
13

14
15 EI has failed to prove that the County is in violation of RCW 36.70A.070(5)(d)(i)(C) in
16 allowing commercial uses in Type I LAMIRDs that primarily serve nonresidential uses. Nor
17 has EI demonstrated that the County has violated the GMA by failing to limit uses in Type I
18 LAMIRDs to uses there were in existence in each LAMIRD on July 1, 1990.
19

20 The Board finds in this Order that nothing in the GMA prevents a county from establishing a
21 new LAMIRD if that LAMIRD meets the criteria set forth in RCW 36.70A.070(5)(d). While a
22 county may not expand a LAMIRD beyond the appropriate logical outer boundaries (LOB), it
23 is not a violation to reconsider the LOB.
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25 However, because CP Policy 3C-2.18(b) allows the establishment of new Rural Centers in
26 areas that developed after July 1, 1990, it is noncompliant with RCW 36.70A.070(5)(d). In
27 addition, CP Policy 3C-6.4 which allows new RMI designations on lands contiguous to
28 existing RMI zoning is in violation of RCW 36.70A.070(5)(d)(iii). Both these policies
29 substantially interfere with Goals 1 and 2 and are invalid.
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1 Also in this Order the Board finds that while FOSC has not demonstrated that the County
2 polices provide for no growth to occur in resource areas, there is an inconsistency between
3 CPP 1.2 and Policy 3A-2.2 regarding rural lands. CP Policy 3A-2-2 fails to make the
4 distinction between rural and resource lands.

5
6 The Board finds it is important that the County make CPP 1.2 and CP Policy 3.A-2.2
7 consistent in order for decision makers and the public to know what is actually being
8 monitored. However, until this is done, it is premature to find that the County's new
9 monitoring is inconsistent with either its CPP or CP. The Board also finds that FOSC has
10 failed to demonstrate that the County has failed to comply with RCW 36.70A.115 and RCW
11 36.70A.215 regarding non-urban allocations.

12
13 Finally, the Board finds that FOSC has not proven that the County's long CaRD ordinance is
14 noncompliant with RCW 36.70A.070(5)(d) or .110(1). The ordinance allows clustering of
15 lots, but maintains the underlying density of the zone, and includes sufficient protections to
16 preserve rural character.
17

18 19 **II. PROCEDURAL HISTORY¹**

20 This matter consolidated two Petitions for Review (PFR). On November 13, 2007, the
21 board received two PFRs. The first PFR was filed by Friends of Skagit County and June
22 Kite (hereinafter "FOSC") and was assigned Case No. 07-2-0024. The second PFR was
23 filed by Evergreen Islands and was assigned Case No. 07-2-0025. Both of the petitions
24 challenge Skagit County's adoption of Ordinance No. O20070009, which adopted the
25 County's Seven-Year updated (2005 GMA Update) as required by RCW 36.70A.130.²
26 Pursuant to RCW 36.70A.290(5), the Board consolidated these PFRS as Case No. 07-2-
27 0025c.
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32 ¹ See Appendix A for a complete procedural history.

² The Friends of Guemes Island PFR, Case No. 07-2-0023, also challenged the County's adoption of this Ordinance as well as the adoption of Resolution No. R20060184. Those issues were not included in the consolidation but related issues were coordinated with this matter.

1 On December 3, 2007, the City of Anacortes, as one of the largest water purveyors in Skagit
2 County, sought intervention to allow the City to fully participate in all issues related to water
3 utility service. This request was subsequently granted by the Board.
4

5 On March 27, 2008 the Hearing on the Merits (HOM) was conducted in Mt. Vernon,
6 Washington. Petitioner was represented by Gerald Steel. The County was represented by
7 Deputy Prosecuting Attorney Arne Denny. Board members present were Holly Gadbow and
8 James McNamara. Mr. McNamara was the presiding officer.
9

10 During the HOM, the Board allowed the County to provide additional materials from the
11 Index regarding the County's response to public comments on the LAMIRDs and the
12 County's treatment of LAMIRDs in the update to the County's Comprehensive Plan (CP)
13 and Development Regulations (DRs). The Board received these materials on April 9, 2008
14 and, on April 14 and April 16, 2008, Petitioners submitted additional materials to the Board,
15 asserting that the "County failed to provide these documents" and that these materials
16 would be of assistance to the Board in its review.³ The Board's response to these
17 submittals is provided in Section III – Preliminary matters.
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20 III. PRELIMINARY MATTERS

21 A. Anacortes Motion to Strike Exhibits 536, 537 and 538

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23 Anacortes moved to strike Exhibits 536, 537, and 538.⁴ The City noted that these exhibits
24 are cited in Petitioner FOSC's opening brief, yet were twice denied as supplemental
25 evidence by the Board.⁵ At the HOM, Petitioner concurred that Exhibits 536 and 537
26 should be stricken. As to Exhibit 538, FOSC urges the Board to take judicial notice of two
27 letter rulings from Snohomish County Superior Court Judge David Kurtz, regarding
28 Snohomish County Case No. 07-2-03240-0, dated August 16 and September 30, 2007 (a
29 ruling on a LUPA petition, and a ruling on a motion for reconsideration, respectively).
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32 ³ April 14, 2008 Correspondence from Gerald Steel; April 16, 2008 Correspondence for Gerald Steel

⁴ City of Anacortes' Motion to Strike, March 12, 2008.

⁵ Id. at 2.

1 WAC 242-02-660(2) provides that a board or presiding officer may take official notice of
2 “decisions of the state courts.” This language is permissive. The Board finds that those
3 judicial rulings are not of assistance to the Board in reaching its decision in this matter for
4 the reasons set forth in the Board’s January 28, 2008 Order on Motions to Supplement the
5 Record. **Therefore, the admission of Exhibit 538 is (for the third time) denied.**
6

7 **B. Joint Petitioners’ Motion to Supplement the Record**
8

9 Petitioners jointly moved to supplement the record with Exhibits 1000 – 1003.⁶ That motion
10 also sought supplementation of the record with Exhibit 538, which was discussed and
11 denied *supra*. The County had no objection to the admission of **Exhibit 1000⁷ and Exhibit**
12 **1002;⁸ both documents will be admitted.**
13

14 With regard to proposed Exhibit 1001, a letter of November 28, 2006 from Evergreen
15 Islands (EI) to the Skagit County Planning Commission, Petitioners claim that this letter,
16 which was e-mailed to the County on the same date, should qualify as an addition to the
17 record because it is a document that was overlooked by the County in compiling its Index.
18 Petitioner EI offers this document for the purpose of demonstrating participation standing.
19 The County objects to this admission, and asserts that it was not included in the Index
20 because it was not submitted as comment on the 2005 update, but instead was submitted
21 for the 2006 Annual Update.
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23

24 The Board notes first, that the letter and corresponding e-mail were not submitted during the
25 comment period for the 2005 Plan Update. Furthermore, nothing in these documents
26 identifies that they are sent for that purpose. Instead, the documents, on their face, reflect
27 comments on two rezoning proposals which are not the subject of the present appeal. For
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⁶ Joint Petitioners’ Motion to Supplement the Record and Take Official Notice and Motion for Permission to File Motion.

⁷ County’s 2005 Update Index of the Record, as it existed on March 16, 2007

⁸ Declaration of Gary Davis, President of Guemes Island

1 these reasons, **Exhibit 1001 is not relevant to establish standing is therefore denied**
2 **admission.**

3
4 With regard to proposed Exhibit 1003, excerpts from the PFLG Soils Classification Map
5 dated August 30, 1996, Petitioners note that this map was prepared by Skagit County and
6 used in adopting the 1997 CP, which was subject to a challenge in WWGMHB Case No. 97-
7 2-0060c. The soils map excerpts are offered to demonstrate that the parcels identified in
8 Issue 7 do not meet the criteria for designation of natural resource lands.⁹ Petitioners also
9 note that the 2005 GMA Update Index lists documents from that previous case as part of
10 the record for the 2005 Update. The County objected on the basis that Petitioners do not
11 have standing on this issue. While the Board will consider the issue of standing elsewhere
12 in this Order, on the basis that the 2005 Update Index incorporated this document, **Exhibit**
13 **1003 will be admitted.**

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16 **C. Petitioner's Motion for Extra Day to File Reply Brief and Skagit County's Motion**
17 **to Strike Late Briefs**

18 Petitioners moved for one extra day to file its reply briefs and for permission to file briefs in
19 excess of the 20 page limit imposed by the Prehearing Order.¹⁰ Petitioners note that it
20 needed additional time and pages of briefing to respond to the standing challenges. The
21 County filed an objection to the late and overlength briefs,¹¹ noting that EI's brief was two
22 pages overlength and was filed three days after the March 21, 2008 deadline. The County
23 further noted that the FOGI brief was two pages overlength, and by incorporating the EI
24 reply, the brief became nine pages overlength and, the FOSC brief, like EI's brief, was not
25 been received until three days after the Board's deadline.
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28 The Board considers the filing of late and overlength briefs a serious matter, as it violates
29 the Prehearing Order, and, more importantly, may prejudice the opposing party. In this
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32 ⁹ Id. at 5.

¹⁰ Petitioners' Motion for One Extra Day to File Reply Briefs and Motion for Overlength Briefs and to Shorten Time.

¹¹ Skagit County's Objections to Late Filings and Motion to Strike.

1 case, however, the Board notes that the issue of standing was not raised in preliminary
2 motions but was raised for the first time in the County's HOM Response Brief. It is
3 reasonable for the Board to conclude that Petitioners needed additional time and pages of
4 briefing in order to respond to a matter potentially dispositive of this appeal. **Thus, under**
5 **these circumstances, the Board shall permit the filing of the late and overlength**
6 **briefs.**
7

8 **D. Skagit County's Motion to Limit Use of Exhibits 500-535**
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10 Skagit County filed a motion to limit use of Petitioners' Exhibits 500-535.¹² The County
11 notes that these exhibits were listed in Attachment 1 and submitted as Additions to the
12 Index. The County further notes that on the day these exhibits were transmitted to the
13 County Prosecuting Attorney's Office via fax, Mr. Denny, the Deputy Prosecuting Attorney
14 handling this appeal was on vacation. Therefore, the documents were routed directly to the
15 Planning Department.¹³ The County argues that the Board should find the additions to the
16 record proposed in Attachment 1 not admissible to establish standing. It argues that the
17 Index of the Record is created by the County pursuant to WAC 242-02-520 and Petitioners
18 are not entitled to make additions to the record. Instead, the County argues, Petitioners
19 must proceed under WAC 242-02-540 to seek to supplement the record. The County also
20 asserts that service of the additions to the Index on the Board and the County was not
21 complete, as no certificate of service on the Board was filed and Petitioners failed to comply
22 with WAC 242-02-340 by establishing proper proof of service.
23
24

25 With respect to the County's argument that petitioners cannot make additions the Index, the
26 Board notes that while the County has the responsibility of creating the Index in the first
27 instance, Petitioners are entitled to note omissions. The Prehearing order provided:
28
29
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31 _____
32 ¹² Skagit County's Request for Consideration of Motion and Motion to Limit Use of Petitioner Exhibits 500
Through 535.

¹³ Id. at 3.

1 The Petitioners shall review the Index prepared by the County promptly and
2 add to the Index if omissions have occurred. **When making additions to the**
3 **index, the parties must use the ATTACHED Additions to the Index form.**
4 Petitioners shall leave a space of 100 numbers between the last number in the
5 Index prepared by the County and any additions offered by the Petitioners.
6 Additions shall be limited to documents or exhibits submitted to the County in
7 the action challenged. **Additions disputed by the County will not be**
8 **allowed as additions to the record PROVIDED that the County notifies**
9 **the Petitioner of its objection within five days of receiving notice of**
10 **proposed additions. If the County objects to the additions, the Petitioner**
11 **may seek to add the documents to the record of documents from which**
12 **exhibits may be drawn without objection through a motion to**
13 **supplement the record.**

14 Thus, Additions to the Index are intended to cure omissions and shall be limited to
15 documents or exhibits submitted to the County in the action challenged, thus they are items
16 that ought to have been included in the first instance. The County is given the opportunity
17 to object to proposed additions that were not in fact submitted to the County. Here, the
18 Petitioners filed their Additions by the deadline established in the Prehearing Order and the
19 County did not object to the Additions by the deadline specified in the Prehearing Order.
20 Therefore, the County's argument is without merit.

21 **E. Petitioners' Objection to Excerpts of the Coordinated Water System Plan**

22 At the HOM, there was an objection by Petitioners to the excerpts of the "draft" Coordinated
23 Water System Plan (CWSP) submitted as an attachment (Tab 2) to the City of Anacortes'
24 Response Brief. The objection was based on the allegation that excerpts from the draft
25 CWSP might differ from the final adopted version as adopted by County Ordinance 17938.
26 The Presiding Officer requested the City of Anacortes to review the excerpts against the
27 final version of the CWSP, and if needed, replace them with the final version. On April 1,
28 2008, Anacortes contacted the Board by letter and confirmed that the final adopted version
29 adds definitions in the glossary for rural water service, service area, and urban water
30 service. In addition, the service provider map is the same, except that it does not use a
31 yellow color to demarcate the Skagit County Public Utility System's territory. A complete
32

1 copy of the CWSP excerpts from the online Ordinance was attached to this
2 correspondence. **Based on the above, the final adopted version April 1, 2008, will be**
3 **substituted for the version submitted as Tab 2 to the City's Response Brief.**
4

5 **F. Post-Hearing Supplemental Materials**

6 As noted *supra*, after completion of the HOM the County submitted additional items that
7 were listed within the Index based on Board questioning and, subsequently, the Petitioners
8 submitted additional materials that it deemed relevant to the Board's request.
9

10 In response to these submittals from Petitioners, the County filed a motion to strike
11 Petitioners post-hearing submissions.¹⁴ The County argues that (1) the Board did not
12 specifically direct the County to provide any materials, (2) these materials were volunteered
13 for submittal by the County, and (3) Petitioners did not object.¹⁵ The County further argues
14 the materials submitted by Petitioners are "not even offered as rebuttal" to the County
15 materials and there is no evidence that the materials were considered during the 2005 GMA
16 update process.¹⁶ Petitioners filed a response to the County's Motion¹⁷ in which it argue
17 that these additional submittals were necessary because the County failed to provide the
18 materials the Board authorized to be submitted.
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22 WAC 242-02-810 provides, in pertinent part, that "[U]nless requested by or authorized by a
23 board, no post hearing evidence, documents, briefs, or motions will be accepted." Whether
24 or not the County submitted sufficient materials, is not the point. In this instance, the Board
25 specifically permitted the County to submit additional materials. A similar request was not
26 made of, nor authorized for, the Petitioners. The Board will not allow unsolicited, competing
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¹⁴ Skagit County's Motion to Strike Petitioners' Post-Hearing Submissions.

31 ¹⁵ *Id.* at 2-3.

32 ¹⁶ *Id.* at 3.

¹⁷ Petitioners' Response to County Motion to Strike and Motion to Allow Motions and Allow Petitioners' Post-Hearing Submissions.

1 submittals or argument beyond the HOM. **The County's objection is sustained, and**
2 **Petitioners' motion is denied.**

3 4 **G. Abandoned Issues**

5 The Board notes that Friends of Skagit County (FOSC) has specifically abandoned Legal
6 Issues 9, 11, and 12¹⁸ and that neither Friends of Guemes Island (FOGI) nor Evergreen
7 Islands (EI) asserted any argument on these issues. **Therefore, the Board concludes that**
8 **Legal Issues 9, 11, and 12 have been abandoned in their entirety by all petitioners to**
9 **this matter.**

10
11 The County asserts that FOGI's and EI's failure to join FOSC's Opening Brief equates to an
12 abandonment of Legal Issues 3 through 11 by FOGI and EI. The Board concurs but notes
13 that at no time did either FOGI or EI attempt to raise these issues in briefing. **Therefore,**
14 **the Board finds that both FOGI and EI have effectively abandoned any claims**
15 **asserted by Legal Issues 3 through 11.**

16 17 18 **H. Participation Standing**

19 In its Response Briefs, the County raised for the first time, a challenge to the standing of the
20 Petitioners. The County contends that none of the petitioners – EI, FOSC, or FOGI - “has
21 not established that it has standing to seek review of all of the issues identified in the
22 Prehearing Order,” specifically issues pertaining to the CP policies and/or goals relating to
23 LAMIRDs.¹⁹ The County further asserts that there is no evidence in the record that
24 demonstrates FOSC participated in the public process on Issues 6 and 10 (water issues) or
25 Issue 7 (natural resource lands).²⁰ Lastly, the County argues that because FOGI and EI
26 abandoned issues 3 through 11, FOSC cannot establish standing based on comments
27 submitted by those petitioners.²¹

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32 ¹⁸ FOSC Opening Brief, at 24.

¹⁹ County's Response Brief – EI, at 2 - 5; County's Response Brief – FOSC, at 2 - 3.

²⁰ County's Response – FOSC, at 4 - 5

²¹ County's Response – FOSC, at 3.

1 In reply, Petitioners filed several briefs responding to the County's Challenge. FOGI and EI
2 respond to the challenge in their Reply Briefs and FOSC responds by filing a separate
3 Reply Brief on this issue alone.²² All three briefs essentially contend that the Petitioners
4 have participation standing because "there is a proper nexus between [a petitioner's]
5 participation ... and issues it now raises" and relies on two exhibits to support this
6 contention.²³ Petitioners argue that the County is seeking an "issue-specific" basis for
7 standing, a position that is contrary to previous Board and Court holdings. FOGI further
8 asserts that the County has failed to properly raise a timely challenge to its standing before
9 the Board and therefore, the Board should not allow the request.²⁴ EI argues that it should
10 be allowed to rely on any document contained in the Index that were submitted prior to the
11 adoption of the challenged action or any document that was permitted to be added to the
12 Index by the Board, especially since the County did not properly give notice that only
13 comments submitted during the formal comment period would qualify as public
14 participation.²⁵

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16
17 RCW 36.70A.280(2) governs the standing requirements for appearing before the Boards, it
18 provides, in relevant part (emphasis supplied):

19
20 A petition may be filed only by: . . . (b) *a person who has participated orally or*
21 *in writing before the county or city regarding the matter on which a review is*
22 *being requested.*

23 In *Wells v. Western Washington Growth Management Hearings Board*, 100 Wn. App. 657,
24 999 P.2d 405 (2000), the Court of Appeals clarified that, to establish participation standing
25 under the GMA, a person must show that his or her participation before the jurisdiction was
26 reasonably related to the person's issue as presented to the Board.
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²² FOGI Reply Brief, at 2-6; EI Reply Brief, at 2-14; FOSC Reply Brief – Standing.

²³ *Id.*

²⁴ *Id.* at 5-6.

²⁵ EI Reply Brief, at 2 – 9.

1 In *Wells*, the Court held participation standing is not issue-specific, stating “[O]ur conclusion
2 [is] that the Legislature did not intend petitioners to raise specific legal issues during the
3 local government planning process.”²⁶ The *Wells* Court also held that a “matter,” as
4 intended by RCW 36.70A.280(2)(b), is not the equivalent of an “issue” and “all three growth
5 management hearings boards have consistently rejected a requirement of issue-specific
6 standing.”²⁷ The Court noted the 1996 Legislature rejected a proposed amendment that
7 would have required petitioners to raise “issues” rather than “matters” before the local
8 government. The Court concluded that “matter” in RCW 36.70A.280(2)(b) refers to a broad
9 “subject or topic of concern or controversy.”²⁸ The Court went on to say: “[I]t would be
10 unrealistic given the time and resource constraints inherent in the planning process to
11 require each individual petitioner to demonstrate to the growth management hearings board
12 that he or she raised a specific legal issue before the board can consider it.”²⁹ The
13 enactment of RCW 36.70A.280(4) incorporated the *Wells* holding into the GMA.³⁰
14
15

16 At the HOM and in briefing, the County inferred that a petitioner needed to comment on
17 specific policies or regulations in order to achieve standing. The Board disagrees. As
18 articulated by the Court in *Wells* and by all three GMHBs, the GMA does not require that a
19 petitioner has provided an “issue-specific” comment in order to achieve standing. With
20 such an assertion, the County is attempting to apply a standard which has been repeatedly
21 rejected. See, e.g. *Wells*, 100 Wn. App. 657. *Butler v. Lewis County*, WWGMHB Case No.
22 99-2-0027c, FDO, at 13; *McNaughton v. Snohomish County*, CPSGMHB 06-3-0027, Order
23
24
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27 ²⁶ *Wells*, 100 Wn. App. at 672.

28 ²⁷ *Id.* at 671.

29 ²⁸ *Id.* at 672-73.

30 ²⁹ *Id.* at 674.

³⁰ RCW 36.70A.280(4) provides:

31 To establish participation standing under subsection (2)(b) of this section, a person must show
32 that his or her participation before the county or city was reasonably related to the person's
issue as presented to the board.

1 on Motions, at 8-10 (Oct. 30, 2006); *Loon Lake Property Owners Assoc., et al v. Stevens*
2 *County*, EWGMHB Case No. 01-1-0002c, Order on Motions (April 23, 2001).

3
4 In order to determine participation standing, the Board reviews the issue as set forth in the
5 Prehearing Order, the Petition for Review, the briefing, and the Record to ascertain the
6 nature of the petitioner's participation. If the petitioner's participation is reasonably related
7 to a petitioner's issues as presented to the Board, then the petitioner has standing to raise
8 and argue that issue. If petitioner's participation is not reasonably related to petitioner's
9 issue as presented to the Board, then the petitioner will not have standing to raise and
10 argue that issue.
11

12
13 Prior to performing this analysis, the Board notes four things that Petitioners (FOSC, FOGL,
14 or EI) asserted in their replies – *first*, that standing may be established by documents
15 submitted outside of the formal public comment period but contained in the County's Index
16 or documents that were subsequently added to the Record by the Board; *second*, that
17 since the County never published notification that it would not consider comments received
18 after the close of the formal comment period any comments received may be utilized to
19 satisfy participation standing; *third*, that attached an article that addresses a subject matter
20 satisfies standing requirements; and *fourth*, that a petitioner may rely on the participation of
21 another in order to achieve standing.
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23
24 As to the first point – standing established by documents submitted outside the formal
25 comment period. The County's notice for public comment clearly denoted a specific
26 deadline of April 18, 2006 for the filing of comments which seeks to ensure that comments
27 are filed in a timely manner.³¹ This ensures that County Staff and Commissioners may have
28 a point in time when public comment is deemed complete allowing them to proceed on
29 determining the actions to be taken in response to these comments.³² Any comments
30
31

32

31 IR 442 and 462

32 In contrast, the Board notes that comments received *prior* to the formal comment period potentially may
demonstrate standing so long as the comments relate to the topic or subject matter of the challenged

1 submitted *after* the comment period was closed cannot now be used as a basis for a
2 petitioner's standing except, for those presented orally, or if permitted in writing, at a
3 subsequently-held public hearing pertaining to the topic or subject matter of the challenged
4 enactment.³³

5
6 As to the second point, for Petitioners to assert that the County needed to specifically state
7 comments received after the deadline would not be considered contradicts the very
8 meaning of the word *deadline* and the express purpose for having one. A deadline means
9 exactly what it states and it is unreasonable for Petitioners to assume that comments
10 received after that date would be considered.³⁴

11
12 As to the third point, for the Board to conclude that submittal of an article addressing the
13 same general topic that a petitioner is now alleging a GMA violation of, with no additional
14 analysis, harkens back to the now-abandoned "appearance" standing. With Exhibit
15 460/255, EI attached a copy of an article authored by a County-hired consultant but
16 provides no analysis based on the article itself. With Exhibit 460/259, FOSC attached a
17 copy of a 2005 issue paper authored by Futurewise pertaining to Rural Areas, with no
18 comparative analysis. For either EI or FOSC to now contend that this attachment instructed
19 "the County on all matters that the County must consider when reviewing its LAMRIDs in the
20 GMA Update,"³⁵ or instructed "the County as to what is required for LAMIRDS"³⁶ pointing to
21 several areas of the article, misses the requirement for a petitioner to comment in "sufficient
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28 enactment – here, the 2005 Comprehensive Plan Update. This ensures that a petitioner may not assert
29 participation standing in regards to a concern it raised before the County years in the past, with no direct
30 reference to the action he or she now seeks to challenge.

31 ³³ See e.g. *1000 Friends v. Spokane County*, EWGMHB Case No. 02-1-0006, Order on Motions, at 2 (June 7,
2002)(holding comments submitted after comment period was closed does not establish standing).

32 ³⁴ See e.g. *ADR/Diehl v. Mason County*, WWGMHB Case No. 07-2-0006, FDO (Aug. 20, 2007)(approving the
use of a deadline for public comment).

³⁵ EI Reply, at 12

³⁶ FOSC Standing Reply, at 7

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1 detail” so as to “give the government the opportunity to consider these concerns as it
2 weighs and balances its priorities and options under the GMA.”³⁷

3
4 Simply submitting an article on a subject matter, without some type of subsequent analysis
5 which relates it to the issues being presented, does not confer participation standing.

6 Although EI noted the article within its discussion on the Similk Beach area (see Exhibit
7 460/255, at 6), there is no reference to the Futurewise paper in FOSC’s comment letter at
8 all, including any reference to enclosures or attachments.
9

10 As to the fourth point, this addresses an organization’s rights in regards to participation
11 standing. Although Petitioners are correct in that an organization may *provide legal counsel*
12 *to represent* its members in proceedings before the Board, for the organization itself to file a
13 PFR it must independently demonstrate that the organization itself has standing. Prior
14 Board decisions have articulated that for an organization to have participation standing, a
15 member of that organization must identify himself or herself as a representative of the
16 organization when that person testifies at a hearing or submits a letter to the County or
17 City.³⁸ This is in accord with the Board’s holding in *Abernoth v. Skagit County*, which found
18 that a petitioner (including an organization), may not rely on the public participation of others
19 in order to achieve standing unless specific reference is made to the representation.³⁹
20
21

22 Applying the standards for participation standing found in the GMA and articulated by the
23 *Wells* Court and subsequent Board decisions, in relation to the points made above, the
24 Board finds:
25

26
27 FRIENDS OF GUEMES ISLAND (FOGI)
28
29

30 ³⁷ See e.g., *Alpine v. Kitsap County*, CPSGMHB Case No. 98/3/0032c/95-3-0039c, Order on Motions, at 7-8
31 (Oct. 7, 1998).

32 ³⁸ See e.g. *1000 Friends v. Thurston County*, WWGMHB Case No. 05-2-0002, Order on Motions (April 21,
2005); *Meshner v. City of Seattle*, CPSGMHB Case No. 01-3-0007 (citing to *Friends of the Law v. King County*,
CPSGMHB Case No. 94-3-0003, Order on Motions at 9 (April 22, 1994)).

³⁹ *Abernoth v. Skagit County*, WWGMHB Case No. 97-2-0060, Order on Motions (Oct. 16, 1997).

1 FOGI joined EI's Opening Brief, which pertains to Legal Issues 1 and 2, providing no
2 additional legal argument. The County specifically challenged EI's standing to raise these
3 issues.⁴⁰ FOGI asserts that because the County has not previously challenged FOGI
4 standing to raise Issues 1 and 2, the issue is not properly before the Board.⁴¹ FOGI is
5 incorrect - WAC 242-02-030(3) provides that any party, *or the Board, upon its own motion*,
6 may challenge jurisdiction. The right to assert a lack of subject matter jurisdiction may not
7 be waived⁴² and may be raised at any time.⁴³ One of the elements of jurisdiction is
8 standing. Therefore, the Board, *sua sponte*, may address whether or not FOGI has
9 standing.
10

11
12 FOGI contends that by its letter of April 22, 2006 (Exhibit 507-1) it formally endorsed and
13 adopted the comments of Roz Glasser (Exhibit 406/235, Letter dated April 18, 2006),
14 thereby giving it standing on Legal Issues 1 and 2. However, not only was the FOGI letter
15 received after the close of the formal public comment period but at no point in her comment
16 letter did Glasser mention that she was a member of FOGI.
17

18 As noted *supra*, for an organization to have standing it must have independently
19 participated during the public participation process. This can be satisfied by members of
20 the organization submitting written or oral comments *in the name of the organization*. FOGI
21 has not pointed to any exhibit which was received prior to the closure of the public comment
22 period that satisfies this requirement. In addition, FOGI may not rely on exhibits submitted
23 by EI to support standing. It must establish standing on its own participation, not on that of
24 others. **Therefore, the Board finds and concludes that FOGI has not demonstrated**
25 **that it has standing to assert claims alleged with Legal Issues 1 and 2. FOGI did not**
26 **join FOISC's Opening Briefing and provided no argument on its own. Friends of**
27 **Guemes Island is DISMISSED as a party in this matter.**
28
29

30
31 ⁴⁰ County Response to EI, at 2.

32 ⁴¹ FOGI Reply, at 5.

⁴² *Harader v. Napavine*, WWGMHB no. 40-2-0017c, FDO at 4 (February 2, 2005) citing *Sullivan v. Paris*, 90 Wn.App. 456, 460 (1998).

⁴³ *Diehl v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 118 Wn.App. 212, 75 P.3d 975 (2003).

1 EVERGREEN ISLANDS (EI)

2 Here, EI's issues (Legal Issues 1 and 2) challenge policies that it asserts will allow new
3 and/or expanded Rural Intermediate (RI) and Rural Village Residential (RVR) LAMIRDs and
4 policies that permit densities to be increased in existing LAMIRDs of this type; policies and
5 zoning regulations which it asserts will allow new/expand commercial and industrial
6 LAMIRDs and will allow new uses is these LAMIRDS. EI, at 3-4. In reply to the challenge,
7 EI claims participation standing through three comment letters:
8

9 Exhibit 460/254: April 17, 2006 Letter "RE: Amendments to the Skagit County
10 Comprehensive Plan/Zoning Map"

11 Exhibit 460/255: April 17, 2006 Letter "RE: Proposed Amendments to the Skagit
12 County Comprehensive Plan Chapter 3, Rural"

13 Exhibit 1001: November 28, 2006 Letter "RE: Proposed Land-Use/Zoning Map
14 Amendments – PL06-0689 and PL-06-0705"
15

16 All three exhibits are letters drafted on EI letterhead, clearly denoting they are comments
17 generated by the organization. Exhibits 460/254 and 460/255 were received by the
18 County within the formal public comment period. As for Exhibit 1001, this is a proposed
19 exhibit that has not been entered into the Record for this proceeding.
20

21
22 Exhibit 460/254 – This exhibit clearly denotes that EI wishes to comment on
23 amendments to the Comprehensive Plan and Zoning Map. Comments pertain to
24 proposed map amendments, the majority of which propose a change from Rural
25 Reserve to Rural Intermediate and seem to be directed at Fidalgo Island. Specifically,
26 with this comment letter EI states:
27

28 The Map Amendments that increase housing densities (mainly Rural
29 Reserve to Rural Intermediate) on Fidalgo Island directly defy the
30 [WWGMHB Order, FDO 00-2-0046c]. While the County did not meet
31 the WWGMHB requirement to [set a date for completion of the Fidalgo
32 Sub-Area Plan and the plan has not be found compliant] ... as a result,
all Map Amendments must not be recommended!

1 Exhibit 460/255 – This exhibit also clearly denotes that EI wishes to comment on
2 amendments to the Comprehensive Plan, specifically Chapter 3 Rural. This comment
3 letter specifically states that EI is concerned about rezoning lands from Rural
4 Intermediate to LAMIRD and sets out proposed Goal C – Rural Residential
5 Designations. The comments primarily pertain to the County’s abandonment of its lot
6 aggregation requirements and its impacts on density. Specific to LAMIRDs, the
7 comment notes:

8
9 As result [elimination of aggregation requirement], the boundaries for
10 the RI areas must be reevaluated to ascertain whether as LAMIRDs
11 these areas meet the [requirements of RCW 36.70A.070(5)(d)].

12 The comments address several areas - Campbell Lake, Trafton Lake Area, Similk
13 Beach Area, Dewey Beach Area, and San Juan Del Mar Area – and summarize that (1)
14 blanket RI rezone should be revisited, (2) boundaries should be revised to ensure
15 compliance with GMA LAMIRD provisions, (3) no expansion of urban services pursuant
16 to .110, and (4) infill/re-development in certain areas will exacerbate septic issues.
17 Attached to this exhibit is a copy of an article on LAMIRDs with specific reference to
18 Similk Beach.
19

20
21 EI also submits proposed Exhibit 1001, a comment letter dated November 28, 2006, some
22 seven months after the close of the formal comment period, which address two specific map
23 amendments pertaining to the Rural Marine Industrial (RMI) zone and Master Planned
24 Resort (MPR) zone and how these will allow the creation of new/expanded non-residential
25 LAMIRDs. As the Board concluded *supra*, comments submitted *after the closure of the*
26 *formal comment period* may not be utilized to establish participation standing. **Therefore,**
27 **EI may not rely on Exhibit 1001 to demonstrate participation standing.**
28

29 As for the other two exhibits, both received during the formal comment period, the Board
30 concludes that these exhibits set forth EI’s concerns in regards to the creation of new and/or
31 expanded LAMIRDs, specifically in regard to RI zoning, the intensification of density,
32 boundaries, and expansion of uses. **Therefore, the Board finds that EI has adequately**

1 demonstrated that it has standing to raise and argue issues based on the concerns
2 articulated in these comment letters.

3
4 FRIENDS OF SKAGIT COUNTY (FOSC)

5 The County challenges FOSC's standing in regards to Legal Issues 1, 2, 6, 7, and 10,
6 asserting that FOSC failed to join EI in regards to the first two issues and fails to give the
7 County reasonable notice as to these basis for the other issues.⁴⁴ In reply, FOSC notes that
8 the County's brief merely hints of challenge to standing and that the Board should not permit
9 such a challenge because it will prejudice FOSC.⁴⁵

11
12 FOSC asserts that the County's challenge to its standing will be prejudicial but does not
13 state the reasoning behind this assertion. However, as noted *supra* with FOGL, challenges
14 to jurisdiction may be raised at any time by a party or by the Board itself. Therefore, the
15 County's challenge should come as no surprise to Petitioners. In addition, as noted
16 *supra*, FOSC may not rely on a document that was simply attached to a comment letter but
17 was never referenced nor analyzed within the comment itself. Therefore, standing for
18 FOSC must be provided within the comments themselves. FOSC points to several exhibits
19 to assert that it has standing on all issues:

21
22 ▪ Issues 1 and 2 - LAMIRDs:

23 In response to the County's assertion that FOSC has not established standing in
24 relationship to LAMIRDs, FOSC points to the following exhibits:⁴⁶

26 Exhibit 460-259: This letter was jointly drafted by FOSC and Futurewise, although it is
27 dated February 16, 2006, it is not stamped received by the County until April 18, 2006 –
28 the last day of the comment period. The sole reference to LAMIRDs within this
29 comment letter is on page 1 and provides (emphasis added):
30

31
32 ⁴⁴ County Response - FOSC, at 4-5.

⁴⁵ FOSC Standing Reply, at 3.

⁴⁶ *Id.* at 6-9.

1 If we truly want to ensure our rural heritage and our rural based industries we
2 must look for opportunities to move density out of the rural and resource lands
3 into urban growth areas, rural villages, and *appropriate* LAMIRDs. We
4 recognize the responsibilities of the Cities to encourage and accommodate
5 new growth but the County could and should be doing more to encourage a
6 development pattern that better protects our rural lands.

7 The comment letter goes on to specifically address stronger flood protection,
8 landscaping requirement and limits in the CaRD ordinance, wildlife habitat protection,
9 and forest and farmland protection. Attached to this letter is an issue paper drafted by
10 Futurewise which FOSC asserts instructs "the County as to what is required for
11 LAMIRDs," and points to several elements of this paper to support its standing.⁴⁷

12 Exhibit 218/45: This exhibit is the County's "Amendment Request Form – 2005 [GMA]
13 Update" and was submitted by Futurewise and FOSC on November 14, 2004, one day
14 prior to the deadline. FOSC points to page 4 of this document which stated:

15
16
17 Chapter 4: Land Use Element – Rural Area p. 4-26 – Policy 4A.7.8(b) Rural
18 Intermediate. This designation should be eliminated ... are urban densities
19 and prohibited in rural area ... Areas that have already been developed at
20 densities of 1 du/2.6 as of 1990 should be designated as LAMIRDs and their
21 boundaries drawn based on the development pattern that was established in
22 1990.

23 Exhibit 460/260: This exhibit is a letter dated April 18, 2006 and submitted jointly by
24 FOSC and Futurewise. FOSC points to Page 2 and 10 to support its standing in regard
25 to LAMIRDs. Page 2 essentially repeats the language excerpted above from Exhibit 460-
26 259. FOSC points to a single sentence on Page 10 which provides:

27 The boundaries of a Type 1 LAMIRD are permanent; the boundary cannot be
28 expanded because this would be inconsistent with the goal of infilling existing
29 areas of development.

30 FOSC asserts that these three exhibits demonstrate that FOSC has standing to raise the
31 subject of LAMIRDs.
32

⁴⁷ FOSC Standing Reply, at 7-8.

1 As noted with EI, Issues 1 and 2 are based on County policies and regulations which the
2 Petitioners assert will permit the creation of new LAMIRDs or allow for existing LAMIRDs to
3 be expanded. The issues also address uses and densities within LAMIRDs. Although
4 Exhibit 218/45 was submitted in 2004, it specifically pertained to the 2005 GMA Update and
5 in association with continued participation, assists in establishing standing. The two other
6 exhibits raise the issue of LAMIRDs, both in regards to density and expansion. **The Board**
7 **finds that FOSC has adequately demonstrated standing in regards to the subject**
8 **matter raised with Legal Issues 1 and 2.**
9

10
11 ▪ Issues 6 and 10 – Water Lines, CWSP, Major/Minor Utilities

12 The County asserts that FOSC never provided it with reasonably notice in regards to a
13 challenged based on water service.⁴⁸ FOSC relies on several documents to support
14 participation standing.⁴⁹
15

16 Exhibit 532: This exhibit is a letter dated August 1, 2007, and received by the County on
17 August 2, 2007, months after the close of the public comment period. The letter
18 specifically states that it pertains to the 2005 Comp Plan Update and is on FOSC
19 letterhead. Comments pertain to the CWSP and include various briefings pertaining to
20 legal action in regards to the CWSP, including actions before the Court and the County
21 Hearing Examiner.
22

23
24 Exhibit 533: This exhibit is a letter dated August 20, 2007, and received by the County
25 on August 29, 2007, months after the close of the public comment period. The letter is
26 on FOSC letterhead and addresses the CWSP. Like Exhibit 532, it includes attachments
27 pertaining to legal actions.
28
29
30
31
32

⁴⁸ County Response (FOSC), at 4-5.

⁴⁹ FOSC Reply – Standing, at 9-11.

1 Exhibit 460/259 at 24: This citation portion of the exhibit is part of Futurewise's issue
2 paper and addresses governmental services, including water lines.

3
4 Exhibit 768: This exhibit is dated August 1, 2007, but has a fax transmission date of
5 September 1, 2007, both dates are months after the close of the public comment period.
6 It is noted as being from FOSC and pertains to needed changes in the 2005 Comp Plan
7 and Development Regulations Update. It addresses the CWSP and notes the Superior
8 Court action.
9

10 These issues pertain to water service, specifically the expansion of urban water services.
11 Although this issue has been the subject of continued litigation for the past decade, FOSC
12 must demonstrate that it timely raised its concerns before the County in regards to the 2005
13 Comp Plan Update, which it has not done. All of the exhibits relied on by FOSC were
14 *submitted months after the close* of the comment period and, as noted *supra*, cannot be
15 utilized to establish participation standing. **Therefore, the Board concludes that FOSC**
16 **has not established standing in regards to these legal issues as they pertain to the**
17 **2005 Comp Plan Update.**
18
19

20 ▪ Issue 7 – Natural Resource Lands
21

22 As with Issues 6 and 10, the County asserts FOSC never provided it with reasonably notice
23 in regards to a challenged based a failure to designate natural resource lands.⁵⁰ FOSC
24 relies on several documents to support participation standing.⁵¹
25

26 Exhibit 218/41: This is a November 2004 letter that specifically references the 2005
27 Comp Plan Amendments. This letter was authored by June Kite. The exhibit
28 references a population chart that was submitted by FOSC and notes agricultural land
29 designations. The Board notes that this exhibit is insufficient for FOSC to assert
30
31
32

⁵⁰ County Response (FOSC), at 4-5.

⁵¹ FOSC Reply – Standing, at 12

1 standing; it was drafted by June Kite, current president for FOSC, but has no reference
2 that she was a member of FOSC or was representing their interest

3
4 Exhibit 218/45: As noted above, this exhibit is FOSC's and Futurewise's joint submittal
5 of its "Amendment Request Form – 2005 [GMA] Update" filed in 2004. FOSC points to
6 Page 5 which addresses the Natural Resource Conservation Element. Comments
7 pertain to actions that would prevent future loss of agricultural lands.
8

9 Exhibit 460/94: Letter dated March 29, 2006, within the comment period, drafted by
10 June Kite and denoted as a member of FOSC. Addresses current uses taxation for
11 resource lands.
12

13 Exhibit 460/220: Letter dated April 17, 2006, within the comment period, drafted by
14 June Kite and denoted as a member of FOSC addresses densities in rural areas and
15 protection of natural resource lands.
16

17 Exhibit 460/259 and 460/260: Letters dated April 18, 2006 submitted jointly by
18 Futurewise and FOSC. These exhibits mentioned natural resource lands protections in
19 several places.
20

21
22 Issue 7 alleges that the County failed to re-evaluate land that had been previously excluded
23 based on vested permits which, because they were not subsequently developed, may be
24 eligible for designation as resource lands. Therefore, the basis of this issue is vested
25 rights in regards to designation of natural resource lands. FOSC asserts that its comments
26 provided that County should re-designate non- agricultural zoned lands into AG-NRL so as
27 to mitigate for future loss; should address current use taxation and parcel size. FOSC
28 points to no reference to the vested rights and resource designations, nor could the Board
29 find any in the exhibits submitted by Petitioners.
30

31
32 Although Petitioners may deem this as being issue-specific, its own issue statement is built
solely around a claim that the alleged GMA violation is based on the fact that "the County

1 simply failed to review for resource land qualification those parcels that had previously been
2 excluded because of vested subdivision permits.”⁵² Therefore, **the Board finds that the**
3 **Petitioners have failed to adequately demonstrate participation standing in regards to**
4 **Legal Issue 7 and it is therefore dismissed.**

5
6 **I. Anacortes - Res Judicata and Collateral Estoppel**

7
8 Within its Response Brief, Intervenor City of Anacortes argues that both *Res Judicata* and
9 *Collateral Estoppel* bar the issue, contending that FOSC is simply attempting to re-litigate
10 issues which it has been challenging for the last decade.⁵³ FOSC asserts that the City has
11 the burden in proving application of these doctrines, both of which require identify of parties
12 and June Kite was not a party to the prior cases.⁵⁴

13
14 *Collateral Estoppel*, or issue preclusion, requires: (1) identical issues, (2) a final judgment on
15 the merits, (3) the same party or a party in privity, and (4) application of the doctrine must
16 not work injustice on the party to whom the doctrine is applied and, the issue to be
17 precluded must have been actually litigated and necessarily determined in the prior action.⁵⁵
18 *Res Judicata*, or claim preclusion, provides that a prior judgment will bar litigation of a
19 subsequent claim if the prior judgment has a concurrence of identity with the subsequent
20 action in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality
21 of the persons for or against whom the claim is made.⁵⁶ Both of these doctrines are
22 equitable in nature.⁵⁷

23
24
25 This Board, as have our colleagues at the other Growth Management Hearings Boards,
26 have previously stated that the GMA has granted it no authority to apply equitable doctrines
27
28

29
30 ⁵² FOSC Opening Brief, at 21.

31 ⁵³ Intervenor Response, at 10.

32 ⁵⁴ FOSC Reply, at 8.

⁵⁵ *Gold Star Resorts, Inc. v. Futurewise*, 140 Wn. App. 378, 387, Fn. 15 (2007).

⁵⁶ *Gold Star Resorts, Inc. v. Futurewise*, 140 Wn. App. 378, 387, Fn. 16 (2007).

⁵⁷ *Hadley v. Maxwell*, 144 Wn.2d 306, 315 (2001)(Collateral estoppel is, in the end, an equitable doctrine);
Brice v. Starr, 93 Wash. 501, 507 (1916)(Res Judicata is an equitable doctrine).

1 and has denied applicability of such doctrines.⁵⁸ **The Board affirms these previous**
2 **holdings and denies dismissal of Issues 6 and 10, as relating to rural and urban water**
3 **service, based on either Collateral Estoppel or Res Judicata.**

4 5 IV. BURDEN OF PROOF

6 For purposes of board review of the comprehensive plans and development regulations
7 adopted by local government, the GMA establishes three major precepts: a presumption of
8 validity; a “clearly erroneous” standard of review; and a requirement of deference to the
9 decisions of local government.
10

11 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
12 amendments to them are presumed valid upon adoption:
13

14 Except as provided in subsection (5) of this section, comprehensive plans and
15 development regulations, and amendments thereto, adopted under this
16 chapter are presumed valid upon adoption.

17 The statute further provides that the standard of review shall be whether the challenged
18 enactments are clearly erroneous:

19 The board shall find compliance unless it determines that the action by the
20 state agency, county, or city is clearly erroneous in view of the entire record
21 before the board and in light of the goals and requirements of this chapter.

22 RCW 36.70A.320(3)
23

24 In order to find the County’s action clearly erroneous, the Board must be “left with the firm
25 and definite conviction that a mistake has been made.” *Department of Ecology v. PUD1*,
26 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
27

28
29
30 ⁵⁸⁵⁸ See e.g. *Yanisch v. Lewis County*, WWGMHB Case No. 02-2-0007c, FDO (Dec. 11, 2002); *WEAN v.*
31 *Island County*, WWGMHB Case No. 00-2-0001, FDO (June 26, 2000); *ADR/Diehl v. Mason County*,
32 WWGMHB Case No. 07-2-0010, FDO (Jan. 16, 2008). See also, *Peninsula Neighborhood Assoc. v. Pierce*
County, CPSGMHB Case No. 95-3-0071, Order on Motions (Jan. 9, 1996); *Hensley v. Snohomish County*,
CPSGMHB Case No. 03-3-0010, Order on Motions (Aug. 11, 2003); *Tacoma v. Pierce County*, CPSGMHB
Case No. 94-3-0001, Order on Motions (March 4, 1994); *Futurewise v. Stevens County*, EWGMHB Case No.
05-1-0006, FDO (Jan. 3, 2006).

1 Within the framework of state goals and requirements, the boards must grant deference to
2 local government in how it plans for growth: In recognition of the broad range of discretion
3 that may be exercised by counties and cities in how it plan for growth, consistent with the
4 requirements and goals of this chapter, the legislature intends for the boards to grant
5 deference to the counties and cities in how it plan for growth, consistent with the
6 requirements and goals of this chapter. Local comprehensive plans and development
7 regulations require counties and cities to balance priorities and options for action in full
8 consideration of local circumstances. The legislature finds that while this chapter requires
9 local planning to take place within a framework of state goals and requirements, the ultimate
10 burden and responsibility for planning, harmonizing the planning goals of this chapter, and
11 implementing a county's or city's future rests with that community.

12 RCW 36.70A.3201 (in part).

13
14
15 In sum, the burden is on the Petitioners to overcome the presumption of validity and
16 demonstrate that any action taken by the County is clearly erroneous in light of the goals
17 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
18 Where not clearly erroneous and thus within the framework of state goals and requirements,
19 the planning choices of local government must be granted deference.

20 21 22 **V. ISSUES PRESENTED**

23 On September 10, 2007, Skagit County passed Ordinance No. O20070009 which adopted
24 the County's Seven-Year update (2005 GMA Update) as required by RCW 36.70A.130 and
25 included amendments to the County-Wide Planning Policies (CPPs), implementing
26 development regulations, and the Comprehensive Plan Land Use/Zoning Map.

27
28
29 The issues originally presented in this case pertain to the specifications (area, use, density,
30 and intensity) of LAMIRDS and their boundaries; the establishment of new or the expansion
31 of existing LAMIRDS; land use needs and capacity analysis; urban and rural water services;
32 natural resource land designations; Long CaRD developments; water utility developments;

mineral extractions within rural areas; internal consistency between the Comprehensive

1 Plan and Development Regulations; and whether such violations justify a finding of
2 invalidity.

3
4 To prevent redundancy, each legal issue will be set forth when the Board is addressing that
5 legal issue in the Discussion section below (see Part VI). As noted *supra*, Preliminary
6 Matters, Section III, the following legal issues were deemed abandoned: Issues 9, 11, and
7 12 were specifically abandoned in their entirety by FOSC and no argument pertaining to
8 these issues were presented by FOGI or EI. Issues 3 through 11 are deemed abandoned
9 by FOGI and EI due to those petitioners failure to join FOSC in its briefing.
10

11 VI. DISCUSSION

12 **Issue No. 1:** Whether the LAMIRDs, specification of areas, uses, densities
13 and intensities within LAMIRDs, and LAMIRD boundaries established by
14 Ordinance # O20070009 in the Comprehensive Plan (primarily in the Rural
15 Element) and Comprehensive Plan Land Use/Zoning Map and implementing
16 regulations in SCC 14.16 are in compliance with RCW 36.70A.020(1)
17 regarding encouraging development in urban areas RCW 36.70A.020(2)
18 regarding discouraging sprawl, RCW 36.70A.020(10) regarding protecting the
19 rural environment and character, RCW 36.70A.040 regarding adopting a plan
20 and consistent fully implementing regulations under Ch. 36.70A RCW, RCW
21 36.70A.070(preamble) regarding internal consistency, RCW 36.70A.070(1)
22 regarding specification of extent of uses, densities and intensities, RCW
23 36.70A.070(5) regarding compliance with LAMIRD standards, RCW
24 36.70A.130 regarding updating for full compliance with identified sections?

25 Position of the Parties

26 Petitioners' Position

27 Petitioner Evergreen Islands (EI) notes that residential LAMIRDs under RCW
28 36.70A.070(5)(d)(i) are designated to recognize areas of existing residential development
29 and to minimize and contain that development.⁵⁹ It cites five Skagit County comprehensive
30
31
32

⁵⁹ EI's Opening Brief, at 13.
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1 plan policies⁶⁰ which it alleges are non-compliant with the GMA because they provide that
2 densities may be increased in Type I LAMIRDs.⁶¹

3
4 EI also challenges a provision of SCC 14.16.140(3) which allows new caretaker quarters or
5 owner/operator housing in the Small Scale Recreation and Tourism (SRT) zone in Type II
6 LAMIRDs as being in conflict with CP Policy 3B-1.6 and in violation of RCW
7 36.70A.070(5)(d)(ii).⁶²

8
9 Next, EI alleges that CP Policies 3C-1.4 and 3C-2.1 are inconsistent with SCC
10 14.16.300(4).⁶³ EI notes that Policy 3C-1.4 provides that the purpose of the Rural
11 Intermediate (RI) designation is residential living, and Policy 3C-2.1 requires new
12 commercial and industrial uses to be located in commercial areas. EI claims that SCC
13 14.16.300(4) is inconsistent with and fails to implement these policies by allowing 32
14 Hearing Examiner Special Uses that are mostly commercial and industrial on land with an
15 RI designation.

16
17
18 EI alleges that requirements for commercial and industrial LAMIRDs are not met because
19 the County allows commercial and industrial uses by special use permit in rural residential
20 zones.⁶⁴ EI thus argues that Policy 3C-2.1 on rural commercial and industrial designations
21 is in conflict with SCC 14.16.300(4), 14.16.310(4) and 14.16.320(4) which allow new more
22 intensive commercial and industrial uses by special use permit.⁶⁵

23 24 County's Position

25
26 In response to EI's claim that five County comprehensive plan policies are non-compliant
27 with the GMA because they provide that densities may be increased in Type I LAMIRDs, the
28 County argues that it is entitled to alter the intensity within a LAMIRD if consistent with the

29
30 _____
31 ⁶⁰ CP 3C-1.8, CP3C -1.9(c), CP11A-4.1(c), CP 12A 4.2(f), and CP 12A-4.2.(g)

32 ⁶¹ Id. at 13-14.

⁶² Id. at 14.

⁶³ Id. at 15.

⁶⁴ Id. at 16.

⁶⁵ Id.

1 character of the existing area, as provided for in RCW 36.70A.070(5)(d)(i)(C).⁶⁶ The County
2 further asserts that EI's assertions are conclusory, not supported by citation to authority or
3 analysis and therefore fail to meet the burden of proof.⁶⁷

4
5 In response to EI's challenge to SCC 14.16.140(3), which would allow caretaker quarters or
6 owner/operator dwelling units in a Type II LAMIRD, the County asserts that EI has not
7 demonstrated that a provision for caretaker residences is unreasonable or inconsistent with
8 the GMA.⁶⁸

9
10 In response to EI's claim of inconsistency between CP Policies 3C-1.4 and 3C-2.1 and SCC
11 14.16.300(4), the County notes that EI has not demonstrated that non-residential uses are
12 not allowed in a Type I LAMIRD.⁶⁹ The County points out that EI did not challenge the
13 development regulations during the public participation process and no changes were made
14 to SCC 14.16.140(3) during the update. Therefore, the County asserts that these provisions
15 are not reviewable.
16

17 **Board Discussion**

18 EI cites the following County plan policies as improperly allowing densities to be increased
19 in Type I LAMIRDs: Policy 3C-1.8, 3C-1.9(c), 12A-4.1(c), 12A-4.2(f), and 12A-4.2(g).
20 However, EI fails to support its argument with references to the particular language it
21 asserts violates RCW 36.70A.070(5)(d)(i) and (v), or to provide argument in support of this
22 claim. For example, while EI claims Policy 3C-1.8 impermissible increases in density, it
23 does not cite the language in this Policy that would do so, nor demonstrate that this is a
24 GMA violation. With regard to policies 12A-4.1(c), 12A-4.2(f), and 12A-4.2(g) EI's claim of
25 non-compliance is couched in terms of non-compliance "to the extent that it suggests"⁷⁰ an
26 inappropriate increase in densities. The mere suggestion of an alleged inconsistency is not
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31 ⁶⁶ County's Response to EI's Brief, at 17.

32 ⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id. at 18.

⁷⁰ EI's Opening Brief at 14.

1 a sufficient basis for a finding of noncompliance. Further, the Board notes that the language
2 of these policies does not guide density for the areas in question (Fidalgo, Big Lake and
3 Birdsvew, respectively) but instead merely notes areas that the community plans for these
4 areas should “consider”. EI has failed to carry its burden of proof to demonstrate that these
5 policies violate the GMA.
6

7 The Board agrees with EI’s argument that SCC 14.16.140(3) allows new caretaker quarters
8 or owner/operator housing in the Small Scale Recreation and Tourism (SRT) zone in Type II
9 LAMIRDs in conflict with CP Policy 3B-1.6 and in violation of RCW 36.70A.070(5)(d)(ii).
10

11 Both CP Policy 3B-1.6 and RCW 36.70A.070(5)(d)(ii) preclude new residential development
12 in a Type II LAMIRD. While neither party has pointed the Board to an applicable definition
13 of “residential development” the Board presumes that caretaker quarters or owner/operator
14 dwelling units could fall within the ambit of a common definition of that term. Further, SCC
15 14.16.140(3) places no limit on the size or scope of such a use. Thus a “caretaker quarters”
16 need not be a facility incorporated within an allowed Type II LAMIRD use, but could be one
17 or more freestanding units comprising new “residential development”. Consequently, the
18 Board finds this section non-compliant with RCW 36.70A.070(5)(d)(ii).
19

20
21 With regard to EI’s claim of inconsistency between CP Policies 3C-1.4 and 3C-2.1 and SCC
22 14.16.300(4) the Board notes that the stated purpose of the Rural Intermediate (RI)
23 designation, as stated in CP Policy 3C-1.4 and SCC 14.16.330 is similar: “The purpose of
24 the Rural Intermediate district is to provide and protect land for residential living in a rural
25 atmosphere, taking priority over resource land uses.” However, CP Policy 3C-1.4 provides “
26 . . . taking priority over resource land uses *and commercially oriented special uses*”
27 (emphasis added). This policy conflicts with the provisions in SCC 14.16.300(4) that allow
28 numerous commercial uses in the RI zone as a special use. While the County notes that its
29 residential and commercial LAMIRDs are co-located⁷¹ this does not explain this
30 inconsistency. Clearly, if the RI zone’s purpose is to protect land for residential living and
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⁷¹ County’s Response to EI at 18.
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1 give priority to residential uses over commercially-oriented uses, this is inconsistent with a
2 policy that allows numerous commercial uses as special uses. Therefore, while the County
3 is correct that the County did not amend its development regulations, and the Petitioner did
4 not challenge them, still the Comprehensive Plan policies must be supported by consistent
5 development regulations. Therefore, we find that CP Policies 3C-1.4 and 3C-2.1 which
6 discourage commercial and industrial uses in residential areas are not supported by
7 consistent development regulations as required by RCW 36.70A.040.
8

9
10 With regard to EI's allegation that requirements for commercial and industrial LAMIRDs are
11 not met because the County allows commercial and industrial uses by special use permit in
12 rural residential zones the Board agrees that Policy 3C-2.1 on rural commercial and
13 industrial designations is in conflict with SCC 14.16.300(4), 14.16.310(4) and 14.16.320(4)
14 which allow new more intensive commercial and industrial uses in the Rural Intermediate,
15 Rural Village Residential, and Rural Reserve by special use permit. Many of the uses
16 allowed in this manner directly conflict with the stated purpose of such areas, and thus
17 create a conflict between the comprehensive plans policies and the related development
18 regulations.
19

20
21 However, with regard to EI's argument that CP Policy 3C-2.1 is in error by allowing new
22 industrial uses in designated commercial LAMIRDs, EI has not demonstrated that this is a
23 violation of RCW 36.70A.070(5). EI's sole argument, that the County has not justified 1990
24 commercial and existing industrial uses existing in the same LAMIRD⁷² impermissibly seeks
25 to shift the burden of proof to the County.⁷³ The same is true of EI's argument that the
26 County has failed to justify rural residential densities greater than one unit per 5 acres.⁷⁴ EI
27 carries the burden of proof and has failed to demonstrate why CP Policy 3C-2.12 fails to
28 comply with the GMA. Currently, it appears that residential uses in Rural Centers are
29 allowed only in existing commercial buildings, and the comprehensive plan does not allow
30
31

32 ⁷² EI's Opening Brief at 17.

⁷³ RCW 36.70A.320(2).

⁷⁴ EI's Opening Brief at 17.

1 individual residences unless they are specifically authorized by a future community plan,
2 which would be subject to challenge for consistency with the GMA.

3
4 El's argument that the County was required to limit new commercial uses to those that are
5 principally designed to serve the existing and projected rural population is not persuasive.

6 El asserts that RCW 36.70A.070(5)(d)(i)(C) prohibits uses that primarily serve
7 nonresidential uses. The statute says nothing of the sort. Instead, it provides that

8 (C) Any development or redevelopment in terms of building size, scale, use, or
9 intensity shall be consistent with the character of the existing areas.

10 Development and redevelopment may include changes in use from vacant
11 land or a previously existing use so long as the new use conforms to the
12 requirements of this subsection (5).

13 This language does not contain the prohibition that El asserts the County has violated.⁷⁵

14
15 Finally, we find unpersuasive El's argument that the County has violated the GMA by failing
16 to limit uses in Type I LAMIRDs to uses there were in existence in each LAMIRD on July 1,
17 1990. El asserts without explanation or citation that "Typically, Rural Centers has one to
18 three businesses in place on July 1, 1990"⁷⁶ and that "Rose Village Commercial areas
19 typically has less than ten businesses".⁷⁷

20
21 Not only is this argument unsupported by citations to the record, but El's limited reading of
22 the statute would limit the allowed uses to those found there on July 1, 1990.

23
24 The Legislature amended the GMA in 2004 to provide flexibility to change uses within
25 LAMIRDs. RCW 36.70A.(5)(d)(i)(C) provides , as quoted above supra, as long as that new
26 development must be consistent in size, scale, use, and intensity with the character of the
27 existing area.
28

29
30 ⁷⁵ RCW 36.70A.070(5)(d)(i)(B), does require development or redevelopment in Type I LAMIRDs to be
31 designed to serve the existing and projected population. While the County's policy includes service to tourists
32 and the traveling public, the uses that the County allows in Rural Centers could serve both the existing
population and projected population and the traveling public.

⁷⁶ Id. at 21.

⁷⁷ Id.

1 **Conclusion:** EI has failed to carry its burden of proof to demonstrate that Policies 3C-1.8,
2 3C-1.9(c), 12A-4.1(c), 12A-4.2(f), and 12A-4.2(g) violate the GMA. However, the Board
3 concludes that SCC 14.16.140(3) which allows new “caretaker quarters”, a form of
4 residential development within Type II LAMIRDs is in violation of RCW
5 36.70A.070(5)(d)(ii).
6

7 The Board further concludes that CP Policies 3C-1.4 and 3C-2.1 are not consistent with the
8 County’s development regulations as required by RCW 36.70A.040. Policy 3C-2.1 on rural
9 commercial and industrial designations is in conflict with SCC 14.16.300(4), 14.16.310(4)
10 and 14.16.320(4) which allow new more intensive commercial and industrial uses in the
11 Rural Intermediate, Rural Village Residential, and Rural Reserve by special use permit.
12

13 EI has not demonstrated that CP Policy 3C-2.1, by allowing new industrial uses in
14 designated commercial LAMIRDs, is in violation of RCW 36.70A.070(5).
15

16 EI has not carried its burden of proof and has failed to demonstrate why CP Policy 3C-2.12
17 fails to comply with the GMA.
18

19 EI has failed to prove that the County is in violation of RCW 36.70A.070(5)(d)(i)(C) in
20 allowing uses that primarily serve existing and projected rural population.
21

22 EI’s has not demonstrated that the County has violated the GMA by failing to limit uses in
23 Type I LAMIRDs to uses there were in existence in each LAMIRD on July 1, 1990.
24

25
26 **Issue No. 2:** Whether after adopting Ordinance # O20070009, the provisions
27 that relate to allowing (or failing to prohibit) new and/or expansion and/or
28 intensification and/or densification of LAMIRDs in the Comprehensive Plan
29 (primarily in Chapters 3 and 12) and in the implementing regulations (primarily
30 in SCC 14.08 and 14.16) (even by new community or joint planning) are in
31 compliance with RCW 36.70A.020(1) regarding encouraging development in
32 urban areas, RCW 36.70A.020(2) regarding discouraging sprawl, RCW
36.70A.020(10) regarding protecting rural environment and character, RCW
36.70A.040 regarding adopting a plan and implementing consistent
regulations under Ch. 36.70A RCW, RCW 36.70A.070(preamble) regarding

1 internal consistency, RCW 36.70A.070(1) regarding specification of extent of
2 uses, densities and intensities, RCW 36.70A.070(5) regarding compliance with
3 LAMIRD standards, and RCW 36.70A.130 regarding updating for full
4 compliance with identified sections because LAMIRDs are generally a one
5 time designation and cannot create new patterns of sprawl?

6 **Position of the Parties**

7 Petitioner's Position

8 EI argues that the County fails to comply with the requirements of RCW 36.70A.070(5)(d)
9 when it fails to prohibit future creation of new Type I LAMIRDs, fails to prohibit future Type II
10 LAMIRDs from being located near other LAMIRDs or UGAs, and fails to prohibit future
11 expansion of existing LAMIRDs of any type.⁷⁸
12

13
14 EI lists twenty CP Policies that it asserts should be found in noncompliance with the GMA
15 because they suggest future creation of new Type I LAMIRDs, future Type III LAMIRDs
16 being located near other LAMIRDs or UGAs, and future expansion of LAMIRDs.⁷⁹
17

18 County's Position

19 The County responds that EI's arguments regarding a county's ability to establish new
20 LAMIRDs, or review the boundaries or uses of a LAMIRD once established are based on a
21 misconception about the requirements of the GMA. The County argues that because the
22 GMA does not bar review of an existing LAMIRD or the later establishment of a LAMIRD,
23 the County is within its authority under Art. 11 Sec.11 of the Washington State Constitution
24 to do so.⁸⁰ The County may establish or modify LAMIRDs, so long as the LAMIRD so
25 created or modified complies with the GMA, the County argues.⁸¹ The County cites to the
26 Central Board case of *1000 Friends of Washington v. Snohomish County*,⁸² as expressly
27 approving this type of activity. Finally, the County notes that in its citation to the County
28
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31 ⁷⁸ EI's Opening Brief at 6.

32 ⁷⁹ Id. at 7-10.

⁸⁰ Skagit County's Response to EI at 7.

⁸¹ Id. at 8.

⁸² *1000 Friends of Washington v. Snohomish County*, CPSGMHB No. 03-3-0026 (FDO, 6/24/04).

1 Policies it claims are noncompliant, EI has failed to demonstrate that any of those policies
2 would allow the County to create a GMA non-compliant LAMIRD.⁸³

3 4 **Board Discussion**

5 EI's arguments regarding the expansion/intensification/densification of LAMIRDs are
6 premised on unfounded assertions regarding the content of the County comprehensive plan
7 and the GMA.

8
9 First, EI takes fault with the County for failing to include a that statement prohibits future
10 creation of new Type I LAMIRDs, prohibits future Type II LAMIRDs from being located near
11 other LAMIRDs or UGAs, and prohibits future expansion of existing LAMIRDs of any type.⁸⁴
12 EI cites no provision of the GMA that would mandate the inclusion of such language.

13
14 Next, EI takes exception to CP Policy 12A-4.2 because it "implies" that the Big Lake Rural
15 Village LAMIRDs are to be expanded and "suggests" there will be an expansion of the RI
16 LAMIRDs⁸⁵. EI fails to cite the language at issue. However, the Board notes that CP Policy
17 4.2 provides, with regard to the Big Lake Rural Village, that the community plan for this area
18 is to consider Sewer District No. 2's comprehensive plan and capital improvement program
19 as a way to allow for additional infill and more intensive rural development. Infill and
20 redevelopment consistent with the character of the existing area is explicitly permitted by the
21 GMA as long as it is consistent with the size, scale, intensity and uses of the existing
22 LAMIRD.⁸⁶

23
24
25 EI's argument that the County CP Policies would foster creation of new LAMIRDs is based
26 on language in *Olympic Environmental Council v. Jefferson County* that "Expansions of
27 LAMIRD boundaries is not an 'opportunity provided by law'"⁸⁷ and in *People for a Livable*
28
29

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31 ⁸³ Skagit County's Response to EI at 15.

32 ⁸⁴ EI Opening Brief at 6.

⁸⁵ Id.

⁸⁶ RCW 36.70A.070(5)(d)(i).

⁸⁷ *Olympic Environmental Council v. Jefferson County*, WWGMHB, No. 00-2-0019 (FDO, 11/11/00) at 5.

1 *Community v. Jefferson County*⁸⁸ that “LAMIRDs are intended to be a one-time recognition
2 of existing areas and uses and are not intended to be used continuously to meet needs (real
3 or perceived) for additional commercial and industrial lands.” However, nothing in the
4 GMA prevents a county from establishing new LAMIRDs if that LAMIRD meets the criteria
5 set forth in RCW 36.70A.070(5)(d). And while a county may not expand a LAMIRD beyond
6 the appropriate logical outer boundaries (LOB), it is not a violation to reconsider the LOB. If
7 the revised LOB meets the standards of RCW 36.70A.070(5)(d)(iv), there is no violation.
8

9
10 In *Olympic Environmental Council v. Jefferson County* the Board’s concern was not to bar
11 all adjustments to the LOB but instead to bar expansions beyond the 1990 LOB. The Board
12 noted:

13 LAMIRDS were never designed to be used as a safety valve for commercial
14 growth and expansion. LAMIRD commercial activity is limited to infill
15 development and redevelopment within the logical outer boundary as
16 predominately delineated by the built environment in 1990. In and of itself,
17 need for additional acreage is not a justification for expanding LAMIRDs
18 beyond their logical outer boundaries. Commercial acreage should be
19 encouraged within Urban Growth Areas. LAMIRDs are not required to have
20 population assigned to them, whereas UGAs are. Expanding LAMIRDs to
21 increase commercial acreage or population removes incentives for directing
22 population growth to UGAs. The BOCC may wish to “fully utilize any and all
23 opportunities provided by law that might promote rural commercial growth.”
(citation omitted) Expansions of LAMIRD boundaries are not an “opportunity
24 provided by law.” The “limited” in LAMIRD means just that.

25 Thus the expansions of the LOB that the Board was addressing in that case were those that
26 were not consistent with the standards of RCW 36.70A.070(5)(d)(iv).

27 In *People for a Livable Community v. Jefferson County* the Board was reviewing
28 comprehensive plan amendments that would allow the county to “continuously identify and
29 allocate sufficient commercial and industrial land to meet future needs based on the 1997
30 amendments to the GMA allowing rural counties to recognize “existing areas and uses.”
31
32

⁸⁸ *People for a Livable Community v. Jefferson County*, WWGMHB No. 03-2-0009 (FDO, 8/22/03) at 1-2.

1
2 The Board was considering whether the county could create or expand LAMIRDs based on
3 a need for new commercial land, and concluded “LAMIRDs are to acknowledge historical
4 reality and not to provide a safety valve for needed or desired additional
5 commercial/industrial development.” The Board did not rule that new LAMIRDs could not be
6 created or existing LAMIRDs expanded.
7

8
9 El also relies upon the case of *Anacortes v. Skagit County*⁸⁹ in support of its argument that
10 no new Type I LAMIRDs may be designated in the future. The Board noted in that case
11 that:

12 We remind the County that LAMIRD provisions were added to GMA to allow
13 the County to acknowledge pre-existing development, not as a prospective
14 and ongoing rural development tool. The County must not add new LAMIRD
15 designations six years after that opportunity was provided through addition of
16 (5)(d). We will be focusing on two key questions as we review separately
17 each of the challenged RFS designations:

- 18 1. Was there “built environment” in July 1990?
19 2. Is the logical outer boundary properly defined as predominantly
20 delineated by the built environment?⁹⁰

21 The Board cited no reason for the statement that the county should not add new LAMIRD
22 designations six years after the addition of (5)(d) to RCW 36.70A.070 and the context of the
23 remainder of the case demonstrates that the Board did not find the LAMIRDs non-compliant
24 on that basis. Instead, the Board required that the area defined by the LAMIRD had to have
25 contained built environment in 1990 and that the LOB had to have been properly defined.
26 We find no support for El’s position in this case.
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⁸⁹ *Anacortes v. Skagit County*, WWGMHB No. 00-2-0049c (Compliance Order 1/31/02)

⁹⁰ *Id.* at 10.

1 The County cites the case of *1000 Friends of Washington v. Snohomish County*,⁹¹ which we
2 agree is instructive. In that case, the Central Board considered whether Type I LAMIRDs,
3 once established could be expanded. The Central Board held:

4 Further, the GMA acknowledges and recognizes that a **comprehensive plan**
5 **is not a static product**, but part of a dynamic process. The Act requires that
6 plans [including UGAs and all plan elements], and development regulations
7 are subject to ongoing review and evaluation, with periodic revisions and
8 updates required and allowed. See e.g., RCW 36.70A.130, .110 and .215.
9 Therefore, in light of the broad and dynamic planning context of the GMA, this
10 Board will not interpret RCW 36.70A.070(5)(d) to prohibit the potential
11 expansion of established Type I LAMIRDs. The Board holds that RCW
12 36.70A.070(5)(d) does not prohibit the potential expansion of Type I LAMIRDs.
However, just as an initial LAMIRD designation must meet the LAMIRD criteria
of the Act, so too must any LAMIRD expansion. (emphasis in the original).⁹²

13 Here, Policy 3C-2.18(b) clarifies that any new Rural Centers must in a commercial area that
14 is predominated by the built environment that existed on July 1, 1990. This would be
15 compliant if it stopped there. However, the County deviates from the GMA requirements for
16 LAMIRDs by allowing the addition of new uses or areas that were developed *after* 1990 if it
17 serves the same function as other Rural Centers that were existing as of July 1, 1990. That
18 is not consistent RCW 36.70A.070 (5)(d) (v) and the GMA makes no provision for adding
19 new areas to a LAMIRD on the basis that they “serve substantially the same function” as the
20 County provides here.⁹³

23 In addition, we find noncompliant policy 3C -6.4. This policy allows designation of new
24 LAMIRDs that are contiguous to existing LAMIRDs Industrial LAMIRDS need to be isolated
25 as required RCW 36.70A.070(5)(d)(iii).
26

27 Therefore, in light of the foregoing, the Board concludes that a county may establish new
28 LAMIRDs or change the boundaries of a LAMIRD so long as the change complies with the
29

31 ⁹¹ *1000 Friends of Washington v. Snohomish County*, CPSGMHB No. 03-3-0026 (FDO, 6/24/04).

32 ⁹² *Id.* at 7.

⁹³ See, *Futurewise v. Thurston County*, Case No. 05-2-0002 (FDO July 20, 2005).

1 GMA. However, the County may not establish new Rural Centers in areas not developed as
2 of July 1, 1990. Nor may the County allow new areas for Rural Marine Industrial areas
3 contiguous to areas with existing RMI zoning. To allow the establishment of new LAMIRDs
4 in this manner substantially interferes with Goals 1 and 2 of the GMA by encouraging
5 development outside the urban areas and encouraging sprawl.
6

7 **Conclusion:** Nothing in the GMA prevents a county from establishing new LAMIRDs if that
8 LAMIRD meets the criteria set forth in RCW 36.70A.070(5)(d). While a county may not
9 expand a LAMIRD beyond the appropriate logical outer boundaries (LOB), it is not a
10 violation to reconsider the LOB. If the revised LOB meets the standards of RCW
11 36.70A.070(5)(d)(iv), there is no violation. Because Comprehensive Plan Policy 3C-2.18(b)
12 allows the establishment of new Rural Centers in areas that developed after July 1, 1990, it
13 is noncompliant with RCW 37.70A.070(5)(d). Policy 3C-6.4 allows new RMI designations on
14 lands contiguous to existing RMI zoning in violation of RCW 36.70A.070(5)(d)(iii).
15
16

17 **Issue No. 3** Whether the Comprehensive Plan is internally inconsistent with
18 regard to the County's urban/non-urban growth allocation policy in violation of
19 RCW 36.70A.070(1) because the allocations don't account for population
20 growth in resource lands when they allocate 80% to urban areas and 20% to
21 rural areas (e.g. Policy 3A-2.2)?

22 **Position of the Parties**

23 Petitioner's Position

24 Petitioner notes that, while Countywide Planning Policy (CPP) 1.2 states that 80% of growth
25 should be in the urban designated areas, it does not state that 20% should be in the rural
26 areas.⁹⁴ Petitioner further notes that the GMA recognizes three classes of land: urban, rural
27 and resource. CPP 1.2 implies that 20% of growth will occur in rural and resource lands,
28 whereas Comprehensive Plan (CP) Policy 3A-2.2 presumes that 20 % of growth will occur
29 in rural lands, with no growth in the resource lands, Petitioner argues. This, Petitioner
30 claims is a violation of RCW 36.70A.210(1)'s requirement for a comprehensive plan to be
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32

⁹⁴ FOSC Opening Brief at 18.
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1 consistent with the countywide framework, and RCW 36.70A.070 requirement that the plan
2 be internally consistent.⁹⁵

3 4 County's Position

5 The County responds that FOSC's argument is based on the false premise that Policy 3A-
6 2.2 bars future growth from occurring on resource lands. The County argues that FOSC
7 mistakenly asserts a distinction between "rural lands" and "resource lands", a distinction not
8 applicable to its Countywide policy regarding population allocation because the policy
9 actually distinguishes between urban and non-urban areas; the latter are referred to as
10 "rural areas" in the policy. The County notes that, for purposes of its comprehensive plan
11 population allocation policy, "rural area" is synonymous with "non-urban area."⁹⁶ The
12 County notes that it has long used the distinction between urban lands and non-urban lands
13 and because comprehensive plan Policy 3A-2.2 includes resource lands in the ambit of
14 "rural lands" and "non-urban lands" it does not provide that no growth will occur on resource
15 lands.
16
17

18 **Board Discussion**

19 While it does not appear that it is the County's intent to bar growth from occurring on
20 resource lands, CP Policy 3A-2.2's use of the term rural area as an apparent reference to
21 non-urban areas could lead to this interpretation. RCW 36.70A.030(16) draws a distinction
22 between urban, rural and resource lands. The use of the urban/rural area distinction in CP
23 Policy 3A-2.2 fails to make the distinction between rural and resource lands. The CPPs and
24 the CP need to be consistent. This is an area that the County can easily clarify on remand.
25
26

27 **Conclusion:** RCW 36.70A.030(16) draws a distinction between urban, rural and resource
28 lands. The use of the urban/rural area distinction in CP Policy 3A-2-2 fails to make the
29 distinction between rural and resource lands and it is inconsistent with Countywide Planning
30 Policy(CPP) 1.2.
31

32
⁹⁵ Id. at 19.

⁹⁶ County's Response to FOSC at 6.

1 **Issue No. 4:** Whether the County has failed to implement CP Policies 3A-1.1
2 and 3A-2.2 in violation of RCW 36.70A.040, RCW 36.70A.120, and RCW
3 36.70A.130?

4 **Position of the Parties**

5 Petitioner's Position

6 FOSC argues that the County's monitoring of growth has failed to subdivide the non-urban
7 growth into a portion in the rural lands and a portion in resource lands.⁹⁷ As a result, FOSC
8 argues, the County cannot tell if the requirements of Policy 3A-2.2 are being met. Finally,
9 FOSC questions whether the County has completed an inventory of available buildable land
10 outside the urban areas. FOSC makes no arguments with respect to Policy 3A-1.1.
11

12

13 County's Position

14 The County argues that FOSC's claim of failure to monitor growth on "resource lands"
15 separately from growth on "rural lands" is made in reliance on its flawed analysis of Policy
16 3A-2.2.⁹⁸
17

18 With regard to Policy 3A-2.2's monitoring program, the County notes that this is a newly
19 adopted program that it has not yet had the opportunity to implement.
20

21 **Board Discussion**

22 Policy 3A-2.2 contains a monitoring program which provides "Monitor the pace of
23 development in conjunction with the maintenance of date describing the inventory of
24 available buildable land." In our consideration of Issue 3, *supra*, the Board concluded that
25 the County needs to make its CP policy and its CPP consistent. Therefore, making these
26 policies consistent will clarify what the County is monitoring. This is important for decision
27 makers alike as they work to keep the County's CP current. We note that FOSC has not
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⁹⁷ FOSC Opening Brief at 19.

⁹⁸ County's Response to FOSC at 7.

1 provided argument or authority to suggest that the County has an obligation to monitor
2 growth in “resource lands” separately from “rural lands”.⁹⁹

3
4 With regard to the claim that the County should be found out of compliance for failure to
5 implement the monitoring program required by Policy 3A-2.2, we note that this monitoring
6 program is a new requirement adopted in the ordinance under appeal. Until the County
7 makes its CPP and CP policies consistent, it is premature to find the County out of
8 compliance with a newly adopted program.
9

10 **Conclusion:** Until the County makes its CPP and CP policies consistent, it is premature
11 to conclude that the County is out of compliance with a program newly adopted by the
12 ordinance under appeal.
13

14 **Issue No. 5:** Whether the County has failed to comply with RCW 36.70A.115
15 and RCW 36.70A.215 regarding non-urban allocations because a land use
16 needs and capacity analysis is required for non-urban areas?
17

18 **Position of the Parties**

19 Petitioner’s Position

20 FOSC argues that when the Legislature amended RCW 36.70A.115 in 2003 it created a
21 new requirement for adjusting not only the areas and intensities/densities designated for
22 residential and commercial/industrial development in UGAs to match the allocated OFM
23 population forecasts, but also required the County to adjust the areas and
24 intensities/densities designated for residential and commercial/industrial development
25 outside of UGAs to match the allocated OFM population forecasts.¹⁰⁰ It asserts that the
26 County has not provided an analysis to show that the areas and densities outside the UGA
27 are sufficient to accommodate the projected population growth outside the UGAs and that
28
29
30

31 ⁹⁹ While FOSC cites not statute that requires the County to monitor growth in rural and resource lands
32 separately, this is a commendable idea to evaluate the County’s work in conserving resource lands and
protecting them from incompatible uses. Additionally, the County’s adoption of a monitoring program is
commendable.

¹⁰⁰ FOSC Opening Brief at 17.

1 the County has far more development potential outside the UGA than necessary to
2 accommodate the 20 year growth allocation.¹⁰¹ FOSC requests that Board require the
3 County to prepare a needs and capacity analysis for residential and commercial/industrial
4 growth outside the UGAs and to make adjustments in its Plan and development regulations
5 to assure that the areas and densities for development allowed outside the UGA are not too
6 big or too small to accommodate the growth allocations.¹⁰²
7

8 County's Position

9
10 In response, the County first challenges FOSC's standing to raise this issue, noting that the
11 FOCS comment never identified that the need for an inventory or vacant and buildable lots
12 and need to inventory and map resource lands were mandatory statutory requirements.¹⁰³
13

14 Beyond its standing argument, the County argues that FOSC misinterprets RCW
15 36.70A.115. The County offers that, if the legislature had intended for Skagit County to
16 prepare an inventory of rural lands, it would have done so, as it did for those counties
17 subject to RCW 36.70A.215. The County argues that RCW 36.70A.115 does not require a
18 rural lands analysis but instead merely requires the County to ensure sufficient capacity of
19 land for development to accommodate the growth allocated in the County's countywide
20 planning polices.¹⁰⁴ The County asserts that FOSC is attempting to impose the
21 requirements of RCW 36.70A.215 onto RCW 36.70A.115, which would violate the rule of
22 statutory construction that where one statute deals with a subject in general terms, and
23 another deals with it in a more detailed way, the two should be harmonized and if there is
24 conflict the specific prevails over the general.¹⁰⁵ The County urges that RCW 36.70A.115
25 must be read in conjunction with RCW 36.70A.110, which addresses UGAs. That is, a
26 county must consider OFM population projections when sizing UGAs, not when sizing rural
27 areas.
28
29

30
31 ¹⁰¹ Id.

32 ¹⁰² Id. at 18.

¹⁰³ Skagit County Response to FOSC at 8-9.

¹⁰⁴ Id at 10.

¹⁰⁵ Id. at 11.

1 **Board Discussion**

2 FOSC offered no argument in its briefing on the issue of whether the County has failed to
3 comply with RCW 36.70A.215 with regard to non-urban areas, and this portion of the issue
4 shall be deemed abandoned.

5
6 With regard to the County's assertion that FOSC lacks standing on this issue, the County
7 recognizes that FOSC commented on a "need or an inventory of vacant lands and buildable
8 lots."¹⁰⁶ The County's objection that "FOSC never indentified that these 'needs were
9 mandatory' statutory requirements"¹⁰⁷ is not well founded would impose too high a standard
10 on the public. There is no need for a member of the public to support their comments with
11 specific statutory references, or even to assert that their comments are based on a GMA
12 mandate in order to establish standing on that issue of concern. Therefore, we hold that
13 FOSC has standing to raise this issue.
14

15
16 We agree with the County that RCW 36.70A.115 does not impose on counties an obligation
17 to conduct a needs and capacity analysis for areas outside the UGA.
18

19 RCW 36.70A.115 provides:

20 Counties and cities that are required or choose to plan under RCW
21 36.70A.040 shall ensure that, taken collectively, adoption of and amendments
22 to their comprehensive plans and/or development regulations provide
23 sufficient capacity of land suitable for development within their jurisdictions to
24 accommodate their allocated housing and employment growth, as adopted in
25 the applicable countywide planning policies and consistent with the twenty-
year population forecast from the office of financial management.

26 We are persuaded by the County's argument that, if the legislature had intended for Skagit
27 County to prepare an inventory of rural lands, it would have done so, as it did for those
28 counties subject to RCW 36.70A.215. We note that the legislature provided at RCW
29 36.70A.215 (7) that the requirements of RCW 36.70A.215 would apply only to those
30
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32

¹⁰⁶ Skagit County's Response to FOSC at 8.

¹⁰⁷ Id at 8-9.

1 counties and cities that, as of 1995, had populations over 150,000. Skagit County does not
2 fall within that class.

3
4 Further, RCW 36.70A.115 does not require a rural lands analysis but instead merely
5 requires the County to ensure sufficient capacity of land for development to accommodate
6 the growth allocated in the County's countywide planning policies. Thus, we note that the
7 Central Board, in *City of Bonney Lake v. Pierce County*,¹⁰⁸ noted that "RCW 36.70A.115
8 appears to support a collective county-wide assessment of UGA capacity since it suggests
9 that the duty to provide sufficient land to accommodate the projected growth is one shared
10 by all jurisdictions."
11

12 As the County pointed out, applying the requirements of RCW 36.70A.215 to all counties
13 would violate the rule of statutory construction that where one statute deals with a subject in
14 general terms, and another deals with it in a more detailed way, the two should be
15 harmonized and, if there is conflict, the specific prevails over the general.¹⁰⁹ Here, RCW
16 36.70A.115 is the more general statute and RCW 36.70A.215 is the more specific. We
17 cannot find, without creating a conflict, that the more general statute, RCW 36.70A.115,
18 imposes the same duty as the more specific, RCW 36.70A.215.
19
20

21 **Conclusion:** Petitioner has failed to demonstrate that the County has failed to comply with
22 RCW 36.70A.115 and RCW 36.70A.215 regarding non-urban allocations.
23

24 **Issue No. 8:** Whether the Long CaRD policies and implementing regulations
25 fail to protect rural character and to avoid urban development and growth
26 outside UGAs in violation of RCW 36.70A.020(1), RCW 36.70A.020(2), RCW
27 36.70A.040(3), RCW 36.70A.060, RCW 36.70A.070(preamble), RCW
28 36.70A.070(1), RCW 36.70A.070(5), RCW 36.70A.110(1), RCW
29 36.70A.110(4), RCW 36.70A.120, RCW 36.70A.130, RCW 36.70A.170, and
30 RCW 36.70A.210?
31
32

¹⁰⁸ CPSGMHB Case No. 05-3-0016c, FDO at 4 (August 4, 2005).

¹⁰⁹ Id. at 11.

1 **Position of the Parties**

2 Petitioner's Position

3 FOSC challenges the County's regulations regarding subdivisions of five lots or more in
4 rural areas – long CaRDs. FOSC alleges that under these provisions, the resulting
5 development may have so many houses clustered together next to a road that it creates a
6 new pattern of urban or suburban development that constitutes prohibited urban growth.¹¹⁰
7 FOSC claims that five houses on five acres, or 10 houses on 10 acres, or 20 houses on 20
8 acres is a new pattern of urban growth allowed under SCC 14.18.330 outside of urban
9 growth areas.¹¹¹ FOSC notes that houses in long CaRD subdivisions may be as close as
10 20 feet to a major road and that while cluster pods are required to be screened from
11 adjacent public roads, and other cluster pods, the landscape standards do not require and
12 effective screen.¹¹² FOSC further argues that the Comprehensive Plan fails to have any
13 criteria for CaRDs as required by RCW 36.70A.070(5) or to avoid growth outside of UGAs
14 as required by RCW 36.70A.110(1). Thus, FOSC argues, the Comprehensive Plan
15 references to CaRD subdivisions should be found to not comply with GMA because of these
16 failures to protect rural character and avoid urban growth outside UGAs.¹¹³
17
18
19

20 County's Position

21 The County asserts that the County's CaRD ordinance was found GMA compliant in
22 2003.¹¹⁴ Further, it argues that FOSC, in focusing on potential patterns of development that
23 might include twenty housed on twenty acres, fails to consider the open space the
24 ordinance creates. In order to cluster twenty housed on twenty acres, a developer would
25 need to set aside 180 acres of open space, out of the 200 necessary to create such a
26 subdivision. The County also notes that CaRDs are allowed in only seven zoning districts
27 and that of these, two are designated as LAMIRDs.¹¹⁵ As LAMIRDs, such areas are
28
29

30 ¹¹⁰ FOSC Opening Brief at 23.

31 ¹¹¹ Id.

¹¹² Id.

32 ¹¹³ Id. at 24.

¹¹⁴ Skagit County's Reply to FOSC at 24 et seq.

¹¹⁵ Id. at 28.

1 expected to include more intense levels of development, the County asserts.¹¹⁶ Density
2 bonuses are not allowed in five of the seven districts and in those where they are permitted,
3 the County points to the open space benefit they would provide. Finally, the County argues
4 that FOSC has not found fault with a key factor of the CaRD ordinance, i.e. that the average
5 density remain rural. This factor protects rural character, the County claims.¹¹⁷
6

7 **Board Discussion**

8 The County's provisions for Conservation and Reserve Developments (CaRD) are
9 contained at SCC 300 - .330. Provisions regarding CaRDs of 5 lots or more, long CaRDs,
10 are found at SCC 18.18.330. That section provides that for CaRDs of 5 lots or more,
11 clustering of lots is required, and it is this clustering, in conjunction with the lack of internal
12 setbacks, proximity to major roads, and lack of meaningful screening requirements that
13 FOSC seems to object to as creating a new pattern of urban development in violation of
14 RCW 36.70A.070(5)(d) and .110(1).
15
16

17 We note that RCW 36.70A.070(5)(b) provides:

18 Rural development. The rural element shall permit rural development, forestry,
19 and agriculture in rural areas. The rural element shall provide for a variety of
20 rural densities, uses, essential public facilities, and rural governmental
21 services needed to serve the permitted densities and uses. To achieve a
22 variety of rural densities and uses, **counties may provide for clustering,**
23 **density transfer, design guidelines, conservation easements, and other**
24 **innovative techniques that will accommodate appropriate rural densities**
25 **and uses that are not characterized by urban growth and that are consistent**
26 **with rural character.**

27 The County notes that a key factor that was considered in the formation of the County's
28 CaRD ordinance was that the average density remains rural.¹¹⁸ FOSC has not challenged
29 this aspect of the CaRD ordinance and instead relies upon intangibles such as the failure to
30

31
32 ¹¹⁶ Id.

¹¹⁷ Id. at 29.

¹¹⁸ Id.

1 protect rural character as a basis for a finding of noncompliance. However, the CaRD
2 ordinance does contain measures to protect rural character.

3
4 The CaRD ordinance provides gross densities shall not exceed those set forth in the lot size
5 Table; that there shall be no density bonus for CaRD developments in areas designated as
6 a "sole source aquifer; that there shall be no density bonus for CaRD developments where
7 the water source is in a low flow watershed.¹¹⁹ It also makes provision for open space¹²⁰
8 and setback provisions included to protect natural resource lands.¹²¹ Furthermore, the
9 provisions applicable to long CaRDs requires clustering of lots, imposes a maximum
10 number of the dwellings in each cluster pod and requires screening of clusters from
11 adjacent public roads, and from other cluster pods.¹²² The Board concludes that these
12 provisions are consistent with RCW 36.70A.070(5)(b)'s requirements to provide for a variety
13 of rural densities in a manner consistent with rural character.
14
15

16 **Conclusion:** FOSC has not proven that the County's long CaRD ordinance is noncompliant
17 with RCW 36.70A.070(5)(d) or .110(1). The ordinance allows clustering of lots, but
18 maintains the underlying density of the zone, and includes sufficient protections to preserve
19 rural character.
20

21 **Issue No. 13:** Whether any portion of Ordinance # O20070009, the
22 Comprehensive Plan or Development Regulations found not to comply with
23 the Act in Issues 1 to 12 above should also be found invalid under RCW
24 36.70A.302 for substantial interference with the fulfillment of Goals 1, 2, 5, 7,
25 8, and/or 10?

26 **Position of the Parties**

27 Petitioner's Position

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¹¹⁹ SCC 14.18.310(1)

¹²⁰ SCC 14.18.310(5)

¹²¹ SCC 14.18.310(8)

¹²² SCC 14.18.310.

1 Petitioner generally requests invalidity on all of the issues where the Board finds
2 noncompliance. FOSC offers that the most egregious issues of non-compliance are the
3 long CaRD implementing regulations, and the rural zoning mapping on parcels P17428,
4 P17414, P17415 and P17416.¹²³
5

6 County's Position

7 The County notes that FOSC must prove noncompliance before a finding of invalidity can
8 be made, and asserts that FOSC has not proven that the challenged comprehensive plan
9 policies are clearly erroneous.¹²⁴ Further, the County argues that FOSC has not established
10 that any noncompliance presents a serious risk of inconsistent development.¹²⁵
11

12 **Board Discussion**

13 A finding of invalidity may be entered when a board makes a finding of noncompliance and
14 further includes a "determination, supported by findings of fact and conclusions of law that
15 the continued validity of part or parts of the plan or regulation would substantially interfere
16 with the fulfillment of the goals of this chapter." RCW 36.70A.302(1) (in pertinent part).
17

18 We have held that invalidity should be imposed if continued validity of the noncompliant
19 comprehensive plan provisions or development regulations would substantially interfere with
20 the local jurisdiction's ability to engage in GMA-compliant planning.¹²⁶ Under this analysis,
21 a finding of invalidity has been imposed where there is a serious risk of significant
22 inconsistent development vesting before the date on which the local jurisdiction is expected
23 to achieve compliance.
24

25 The extent of the risk is dependent upon the facts of each case. Except with regard to the
26 noncompliant provisions regarding Rural Centers and Rural Marine Industrial LAMIRDs,
27
28

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30
31 ¹²³ FOSC Opening Brief at 24.

32 ¹²⁴ Skagit County Response to FOSC at 32.

¹²⁵ Id.

¹²⁶ See, *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing Invalidity, February 13, 2004).

1 there has been no showing that inconsistent development applications are likely to vest in
2 significant numbers during the remand period. As to Comprehensive Plan Policies 3c-
3 2.18(b) (Rural Centers) and 3C-6.4 (Rural Marine Industrial), the Board has discussed
4 above why these provisions could lead to inappropriate urban style development and
5 sprawl.
6

7 **Conclusion:** The Board finds that the circumstances here warrant the imposition of
8 invalidity regarding Comprehensive Plan Policies 3C-2.18(b) (Rural Centers) and 3C-6.4
9 (Rural Marine Industrial) as the continued validity of those provisions would substantially
10 interfere with Goals 1 and 2 of the GMA.
11

12 VII. FINDINGS OF FACT

- 13 1. Skagit County is a county located west of the crest of the Cascade Mountains that is
14 required to plan pursuant to RCW 36.76A.040
- 15 2. On September 10, 2007 the County adopted Ordinance O20070009, adopting Skagit
16 County's seven year update of its comprehensive plan and development regulations.
- 17 3. On November 13, 2007, the board received two PFRs. The first PFR was filed by
18 Friends of Skagit County and June Kite and was assigned Case No. 07-2-0024. The
19 second PFR was filed by Evergreen Islands and was assigned Case No. 07-2-0025.
20
- 21 4. All of the petitions challenge Skagit County's adoption of Ordinance No. O20070009,
22 which adopted the County's Seven-Year updated (2005 GMA Update) as required by
23 RCW 36.70A.130.
- 24 5. On December 27, 2007, the Board consolidated those issues raised in Friends of
25 Guemes Island v. Skagit County, Case No.07-2-0023, with those that were identical
26 with those issues raised in Case No. 07-2-0025c.
27
- 28 6. Pursuant to RCW 36.70A.290(5), the Board consolidated these PFRS as Case No.
29 07-2-0025c.
30
- 31 7. On December 3, 2007, the City of Anacortes, as one of the largest water purveyors in
32 Skagit County, sought intervention to allow the City to fully participate in all issues
related to water utility service. This request was granted by the Board.

- 1 8. On March 27, 2008 the Hearing on the Merits (HOM) was conducted in Mt. Vernon,
2 Washington.
- 3 9. Issues 9, 11, and 12 have been abandoned in their entirety by all petitioners to this
4 matter.
- 5 10. FOGI and EI have abandoned any claims asserted by Issues 3 through 11.
- 6 11. The County's notice for public comment clearly denoted a specific deadline of April
7 18, 2006 for the filing of comments which seeks to ensure that comments are filed in
8 a timely manner.
- 9 12. FOGI submitted a letter of April 22, 2006 it formally endorsing and adopting the
10 comments of Roz Glasser (Letter dated April 18, 2006).
- 11 13. The FOGI letter was received after the close of the formal public comment period and
12 nowhere in the comment letter is Glasser mentioned a member of FOGI.
- 13 14. FOGI has not demonstrated a basis for standing to assert claims alleged with Legal
14 Issues 1 and 2. FOGI did not join FOSC's Opening Briefing and provided no
15 argument on its own on these issues.
- 16 15. Exhibit 460/254: April 17, 2006 Letter "RE: Amendments to the Skagit County
17 Comprehensive Plan/Zoning Map"; Exhibit 460/255: April 17, 2006 Letter "RE:
18 Proposed Amendments to the Skagit County Comprehensive Plan Chapter 3, Rural";
19 and Exhibit 1001: November 28, 2006 Letter "RE: Proposed Land-Use/Zoning Map
20 Amendments – PL06-0689 and PL-06-0705" are letters drafted on EI letterhead,
21 denoting they are comments generated by the organization.
- 22 16. Exhibit 460/254 denotes that EI wishes to comment on amendments to the
23 Comprehensive Plan and Zoning Map. Comments pertain to proposed map
24 amendments, the majority of which propose a change from Rural Reserve to Rural
25 Intermediate and seem to be directed at Fidalgo Island. It was received during the
26 comment period.
- 27 17. Exhibit 460/255 denotes that EI wishes to comment on amendments to the Comp
28 Plan, specifically Chapter 3 Rural. This comment letter specifically states that EI is
29 concerned about rezoning lands from Rural Intermediate to LAMIRD and sets out
30
31
32

1 proposed Goal C – Rural Residential Designations. The comments primarily pertain
2 to the County’s abandonment of its lot aggregation requirements and its impacts on
3 density. It was received during the comment period.

4 18. Exhibit 1001 is a proposed exhibit that has not been entered into the Record for this
5 proceeding; it is a comment letter dated November 28, 2006, some seven months
6 after the close of the formal comment period.

7
8 19. FOSC points to several exhibits to assert that it has standing on all issues. Exhibit
9 460-259: a letter jointly drafted by FOSC and Futurewise, although it is dated
10 February 16, 2006, it is not stamped received by the County until April 18, 2006 – the
11 last day of the comment period; Exhibit 218/45: the County’s “Amendment Request
12 Form – 2005 [GMA] Update” and was submitted by Futurewise and FOSC on
13 November 14, 2004, one day prior to the deadline; Exhibit 460/260: a letter dated
14 April 18, 2006 and submitted jointly by FOSC and Futurewise.

15
16 20. Although Exhibit 218/45 was submitted in 2004, it specifically pertained to the 2005
17 GMA Update and in association with continued participation, assists in establishing
18 standing. The two other exhibits raise the issue of LAMIRDs, both in regards to
19 density and expansion.

20
21 21. FOSC relies on several documents to support participation standing on issues 6 and
22 10: Exhibit 532: a letter dated August 1, 2007, and received by the County on
23 August 2, 2007, months after the close of the public comment period; Exhibit 533: a
24 letter dated August 20, 2007, and received by the County on August 29, 2007,
25 months after the close of the public comment period; Exhibit 460/259 at 24: the
26 citation portion of the exhibit is part of Futurewise’s issue paper and addresses
27 governmental services, including water lines; Exhibit 768: This exhibit is dated
28 August 1, 2007, but has a fax transmission date of September 1, 2007, both dates
29 are months after the close of the public comment period.

30
31 22. FOSC relies on several documents to support participation standing regarding issue
32 7: Exhibit 218/41: a November 2004 letter that specifically references the 2005
Comp Plan Amendments. This letter was authored by June Kite. The exhibit

1 references a population chart that was submitted by FOSC and notes agricultural
2 land designations; it was drafted by June Kite, current president for FOSC, but has
3 no reference that she was a member of FOSC or was representing their interest;
4 Exhibit 218/45: this exhibit is FOSC's and Futurewise's joint submittal of its
5 "Amendment Request Form – 2005 [GMA] Update" filed in 2004. Comments
6 pertain to actions that would prevent future loss of agricultural lands; Exhibit 460/94:
7 Letter dated March 29, 2006, within the comment period, drafted by June Kite and
8 denoted as a member of FOSC. Addresses current uses taxation for resource
9 lands; Exhibit 460/220: Letter dated April 17, 2006, within the comment period,
10 drafted by June Kite and denoted as a member of FOSC. Addresses densities in
11 rural areas and protection of natural resource lands; Exhibit 460/259 and 460/260:
12 Letters dated April 18, 2006 submitted jointly by Futurewise and FOSC. These
13 exhibits mentioned natural resource lands protections in several places.
14

15
16 23. The language of policies 3C-1.8, 3C-1.9(c), 12A-4.1(c), 12A-4.2(f), and 12A-4.2(g).
17 does not guide density for the areas in question (Fidalgo, Big Lake and Birdview,
18 respectively) but instead merely notes areas that the community plans for these
19 areas should "consider".

20
21 24. Both CP Policy 3B-1.6 and RCW 36.70A.070(5)(d)(ii) preclude new residential
22 development in a Type II LAMIRD.

23
24 25. SCC 14.16.140(3) allows new caretaker quarters or owner/operator housing in the
25 Small Scale Recreation and Tourism (SRT) zone in Type II LAMIRDS

26
27 26. The stated purpose of the Rural Intermediate (RI) designation, as stated in CP Policy
28 3C-1.4 and SCC 14.16.330 is similar: "The purpose of the Rural Intermediate district
29 is to provide and protect land for residential living in a rural atmosphere, taking
30 priority over resource land uses." However, CP Policy 3C-1.4 provides " . . . taking
31 priority over resource land uses *and commercially oriented special uses*" (emphasis
32 added).

- 1
2 27. CPP 1.2 distinguishes between urban and non-urban areas while CP Policy 3A-2.2
3 refers to non-urban areas as the rural area. The County's policies do not distinguish
4 between non-urban and resource lands.
5
6 28. Policy 3A-2.2 contains a monitoring program which provides "Monitor the pace of
7 development in conjunction with the maintenance of date describing the inventory of
8 available buildable land." This monitoring program is a new requirement adopted in
9 the ordinance under appeal.
10
11 29. FOSC offered no argument in its briefing on the issue of whether the County has
12 failed to comply with RCW 36.70A.215 with regard to non-urban areas, and this
13 portion of the issue shall be deemed abandoned.
14
15 30. The legislature provided at RCW 36.70A.215 (7) that the requirements of RCW
16 36.70A.215 would apply only to those counties and cities that, as of 1995, had
17 populations over 150,000. Skagit County does not fall within that class.
18
19 31. RCW 36.70A.115 does not require a rural lands analysis but instead merely requires
20 the County to ensure sufficient capacity of land for development to accommodate the
21 growth allocated in the County's countywide planning policies.
22
23 32. The County's provisions for Conservation and Reserve Developments (CaRD) are
24 contained at SCC 300 - .330. Provisions regarding CaRDs of 5 lots or more, long
25 CaRDs, are found at SCC 18.18.330.
26
27 33. The CaRD ordinance provides gross densities shall not exceed those set forth in the
28 lot size Table; that there shall be no density bonus for CaRD developments in areas
29 designated as a "sole source aquifer; that there shall be no density bonus for CaRD
30 developments where the water source is in a low flow watershed. It also makes
31 provision for open space and setback provisions included to protect natural resource
32 lands. The provisions applicable to long CaRDs requires clustering of lots, imposes a
maximum number of the dwellings in each cluster pod and requires screening of
clusters from adjacent public roads, and from other cluster pods.

34. Except as to Comprehensive Plan Policies 3C-2.18(b) and 3C-6.4 there has been no showing that inconsistent development applications are likely to vest in significant numbers during the remand period.

Findings Regarding Invalidity

35. Policy 3C -2.18(b) deviates from the GMA requirements for LAMIRDs by allowing the addition of new uses or areas that were developed after 1990 if they serve the same function as other Rural Centers that were existing as of July 1, 1990.

36. Policy 3C-6.4 allows lands contiguous to areas with existing RMI zoning to be redesignated/rezoned RMI.

37. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.

VIII. CONCLUSIONS OF LAW

A. The Board has jurisdiction over the parties to this action.

B. The Board has jurisdiction over the subject matter of this action

C. Petitioner Evergreen Islands has standing to raise issues regarding LAMIRDS (Issues 1 and 2) in this case.

D. Petitioner Evergreen Islands has standing to raise issues regarding the County's urban/non-urban growth allocation policy (Issue 3), CP Policies 3A-1.1, 3A-2.2 (Issue 4), non-urban growth allocations (Issue 5), the Long CaRD policy (Issue 8) in this case.

E. Petitioners lack standing to bring the remaining issues in this case.

F. EI has failed to carry its burden of proof to demonstrate that Policies 3C-1.8, 3C-1.9(c), 12A-4.1(c), 12A-4.2(f), and 12A-4.2(g) violate the GMA.

G. SCC 14.16.140(3) which allows new "caretaker quarters", a form of residential development within Type II LAMIRDs is in violation of RCW 36.70A.070(5)(d)(ii).

H. CP Policies 3C-1.4 and 3C-2.1 are not supported by consistent development regulations as required by RCW 36.70A.040.

I. Policy 3C-2.1 on rural commercial and industrial designations is in conflict with SCC 14.16.300(4), 14.16.310(4) and 14.16.320(4) which allow new more intensive

- commercial and industrial uses in the Rural Intermediate, Rural Village Residential, and Rural Reserve by special use permit so do not comply with RCW 36.70A.040.
- J.** EI has not demonstrated that CP Policy 3C-2.1, by allowing new industrial uses in designated commercial LAMIRDs, is in violation of RCW 36.70A.070(5).
- K.** EI carries the burden of proof and has failed to demonstrate why CP Policy 3C-2.12 fails to comply with the GMA.
- L.** EI has failed to prove that the County is in violation of RCW 36.70A.070(5)(d)(i)(C) in allowing uses that primarily serve nonresidential uses.
- M.** EI's has not demonstrated that the County has violated the GMA by failing to limit uses in Type I LAMIRDs to uses there were in existence in each LAMIRD on July 1, 1990.
- N.** Nothing in the GMA prevents a county from establishing new LAMIRDs if that LAMIRD meets the criteria set forth in RCW 36.70A.070(5)(d). While a county may not expand a LAMIRD beyond the appropriate logical outer boundaries (LOB), it is not a violation to reconsider the LOB. If the revised LOB meets the standards of RCW 36.70A.070(5)(d)(iv), there is no violation.
- O.** Because Comprehensive Plan Policy 3C2-18(b) allows the establishment of new Rural Centers in areas that developed after July 1, 1990, it is noncompliant with RCW 36.70A.070(5)(d).
- P.** Policy 3C-6.4 allows new RMI designations on lands contiguous to existing RMI zoning in violation of RCW 36.70A.070(5)(d)(iii).
- Q.** There is an inconsistency between CPP 1.2 and Policy 3A-2.2. While it does not appear that it is the County's intent to bar growth from occurring on resource lands, CP Policy 3A-2.2's use of the term rural area as an apparent reference to non-urban areas could lead to this interpretation. RCW 36.70A.030(16) draws a distinction between urban, rural and resource lands. By the use of the urban/rural area distinction in CP Policy 3A-2-2 fails to make the distinction between rural and resource lands CP Policy 3A-2-2 is not consistent with CPP 1.2 so does not comply with RCW 36.70A. 200(1).

- 1 **R.** It is premature to conclude that the County's newly adopted monitoring program is
2 out of compliance with a program newly adopted by the ordinance under appeal until
3 work to make its CPP1.2 and CP Policy 3A-2-2 consistent.
- 4 **S.** FOSC has failed to demonstrate that the County has failed to comply with RCW
5 36.70A.115 and RCW 36.70A.215 regarding non-urban allocations
- 6 **T.** FOSC has not proven that the County's long CaRD ordinance is noncompliant with
7 RCW 36.70A.070(5)(d) or .110(1). The ordinance allows clustering of lots, but
8 maintains the underlying density of the zone, and includes sufficient protections to
9 preserve rural character.
- 10 **U.** The Board finds that the circumstances here warrant the imposition of invalidity
11 regarding to Comprehensive Plan Policies 3c-2.18(b) (Rural Centers) and 3C-6.4
12 (Rural Marine Industrial) as the continued validity of those provisions would
13 substantially interfere with Goals 1 and 2 of the GMA.
- 14 **V.** Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.

17 **IX. ORDER**

18 Based on the foregoing, the County is ordered to bring its Comprehensive Plan and
19 development regulations into compliance with the Growth Management Act pursuant to this
20 decision within 180 days. Compliance shall be due no later than November 12, 2008. The
21 following schedule for compliance, briefing and hearing shall apply:

Item	Date Due
Compliance Due	November 12, 2008
Compliance Report and Index to Compliance Record	November 17, 2008
Objections to a Finding of Compliance	December 1, 2008
Response to Objections	December 15, 2008
Compliance Hearing	December 29, 2008

30
31 DATED this 12th day of May, 2008 .

32
James McNamara, Board Member

Holly Gadbow, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

APPENDIX A
Procedural History

Friends of Skagit County, et al v. Skagit County, WWGMHB Case No. 07-2-0025c

On November 13, 2007, the Board received a PFR from Friends of Skagit County and June Kite. This PFR was assigned Case No. 07-2-0024.

On November 13, 2007, the Board received a PFR from Evergreen Islands. This PFR was assigned Case No. 07-2-0025.

On November 16, 2007, the Board issued its Notice of Hearing and Preliminary Schedule.

On November 19, 2007, the Board received Skagit County's Notice of Appearance, Deputy Prosecutor Arne Denny.

On November 28, 2007, the Board received Skagit County's Index to the Record.

On December 3, 2007, the City of Anacortes sought intervention to allow the City to fully participate in all issues related to water utility service.

On December 4, 2007, the Board held a Telephonic Prehearing Conference on this matter and, on December 14, 2007, the Board issued its Prehearing Order and Consolidation of 07-2-0024 and 07-2-0025.

On December 14, 2007, the Board issued its Order Granting Intervention to the City of Anacortes.

1 On December 19, 2007, the Board received Joint Petitioners' Motion to Amend the
2 December 14, 2007 Prehearing Order.

3
4 On December 26, 2007, the Board issued its Amended Prehearing Order and
5 Consolidation of 07-2-0024 and 07-2-0025, denoting the consolidate of LAMIRD issues
6 from Case No. 07-2-0023, *Friends of Guemes Island v. Skagit County*.
7

8
9 On December 27, 2007, the Board received Petitioners' Additions to the Index to the
10 Record of the Local Jurisdiction, with one attachment.
11

12 On January 11, 2008, the Board received Skagit County's Motion to Supplement the
13 Record or Index, with one attachment. Also on this date, the Board received Skagit
14 County's Motion to Supplement the Record, with one attachment.
15

16
17 On January 14, 2008, the Board received Joint Petitioners' Motion to Supplement the
18 Record, with six attachments.
19

20 On January 17, 2008, the Board received Petitioners' Response to County Motions to
21 Supplement the Record.
22

23
24 On January 28, 2008, the Board issued its Order on Motions to Supplement the Record.
25

26 On February 7, 2008, the Board received Joint Petitioners' Motion for Reconsideration
27 of Order on Motions to Supplement the Record.
28

29 On February 20, 2008, the Board received opening briefs for Friends of Guemes Island
30 and Evergreen Islands, with three attachments.
31
32

1 On February 20, 2008, the Board received Friends of Skagit County's Motion for One
2 Extra Day to File Opening Brief and Motion to Shorten Time.

3
4 On February 21, 2008, the Board received the opening brief for Friends of Skagit
5 County, with sixteen attachments.
6

7
8 On February 22, 2008, the Board issued its Order on Motion for Reconsideration.
9

10 On March 12, 2008, the Board received Skagit County's Response to Friends of Skagit
11 County's Opening Brief Regarding Issues 3 through 8, 10, and 13, with ten attachments.
12

13 On March 12, 2008, the Board received the City of Anacortes' Opposition Brief, with
14 four attachments, and the City of Anacortes' Motion to Strike.
15

16
17 On March 12, 2008, the Board received Skagit County's Response to Evergreen
18 Islands' Opening Brief Regarding Issues 1, 2, and 13 (LAMIRDs), with seven
19 attachments.
20

21 On March 13, 2008, the Board received from Skagit County several core documents
22 including: Skagit County Comprehensive Plan, dated October 10, 2007; 2005 Growth
23 Management Update, Integrated SEPA/GMA Report, dated February 17, 2006; Skagit
24 County Code, Title 14, Unified Development Code, dated October 10, 2007; and a set
25 of maps entitled Skagit County Comprehensive Plan Designation and Zoning Districts
26
27

28 On March 21, 2008, the Board received Skagit County's Request for Consideration of
29 Motion and Motion to Limit Use of Petitioner Exhibits 500 through 535, with two
30 attachments.
31
32

1 On March 21, 2008, the Board received Friends of Guemes Island's Reply Brief, with
2 eight attachments and a Declaration of Gary Davis.

3
4 On March 21, 2008, the Board received Evergreen Islands' Reply Brief, with eight
5 attachments.
6

7
8 On March 24, 2008, the Board received Petitioners' Motion for One Extra Day to File
9 Reply Briefs and Motion for Overlength Briefs and to Shorten Time.

10
11 On March 24, 2008, the Board received Joint Petitioners' Motion to Supplement the
12 Record and Take Official Notice and Motion for Permission to File Motion.
13

14 On March 24, 2008, the Board received Friends of Skagit County's Reply Brief on
15 Merits, with three attachments.
16

17
18 On March 24, 2008, the Board received Friends of Skagit County's Reply Brief to Skagit
19 County's Standing Challenges, with 12 attachments.
20

21 On March 24, 2008, the Board received Skagit County's Objections to Late Filings and
22 Motion to Strike. The Board also received Skagit County's General Objection to Motion
23 to Supplement.
24

25
26 On March 25, 2008, the Board received Skagit County's Additional Objections to Late
27 and Overlength Reply Briefs, Request for Consideration of Motion and Motion to Strike
28 FOSC's Reply Briefs.
29

30 On March 25, 2008, the Board received a Declaration of Gary Davis.
31
32

1 On March 27, 2008, the Board held the Hearing on the Merits (HOM) for this matter.
2 The HOM was held in Mt. Vernon, Washington at 4701 E. Division Street.

3
4 On March 27, 2008, the Board received a Declaration of Susan Drummond, with three
5 attachments.
6

7
8 On March 27, 2008, the Board received from Skagit County several documents that had
9 been requested by the Board at the HOM. These documents included: Skagit County
10 Code Chapter 14.24, Critical Areas Ordinance Table of Sections; Notice of Availability,
11 Public Comments and Public Hearings on Skagit County's 2005 GMA Update; Public
12 Notice Skagit County Comprehensive Plan, Land Use/Zoning Map and Development
13 Regulations Update; Skagit County Public Notice Deadlines for 2005 Update; Skagit
14 County to Review and Update its Comprehensive Plan and Development Regulations
15 Notice; and 2005 GMA Update – Skagit County Planning Commission Recorded
16 Motion, dated July 9, 2007.
17

18
19 On April 1, 2008, the Board received correspondence from the City of Anacortes in
20 response to a request made by the Board at the HOM pertaining to the Coordinated
21 Water System Plan. This correspondence had one attachment.
22

23
24 On April 9, 2008, the Board received a Memorandum from Skagit County, dated April 4,
25 2008, entitled Submissions of Responses to Comments and Additional Discussions of
26 LAMIRDs index for Skagit County's 2005 Update for Case No. 07-2-0025c.
27

28 On April 14, 2008, the Board received correspondence from Petitioners regarding
29 Supplementing County 4/4/08 Memorandum with list of exhibits
30

31
32 On April 16, 2008, the Board received correspondence from Petitioners regarding
Further Supplementing County 4/4/08 Memorandum.

1
2 On April 17, 2008, the Board received Skagit County's Motion to Strike Petitioners'
3 Post-Hearing Submissions.
4

5 On April 18, 2008, the Board received Petitioners' Response to County Motion to Strike
6 and Motion to Allow Petitioners' Post-Hearing Submissions.
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APPENDIX B

LEGAL ISSUES – WWGMHB Case No. 07-2-0025c

1. Whether the LAMIRDs, specification of areas, uses, densities and intensities within LAMIRDs, and LAMIRD boundaries established by Ordinance # O20070009 in the Comprehensive Plan (primarily in the Rural Element) and Comprehensive Plan Land Use/Zoning Map and implementing regulations in SCC 14.16 are in compliance with RCW 36.70A.020(1) regarding encouraging development in urban areas RCW 36.70A.020(2) regarding discouraging sprawl, RCW 36.70A.020(10) regarding protecting the rural environment and character, RCW 36.70A.040 regarding adopting a plan and consistent fully implementing regulations under Ch. 36.70A RCW, RCW 36.70A.070(preamble) regarding internal consistency, RCW 36.70A.070(1) regarding specification of extent of uses, densities and intensities, RCW 36.70A.070(5) regarding compliance with LAMIRD standards, RCW 36.70A.130 regarding updating for full compliance with identified sections?
2. Whether after adopting Ordinance # O20070009, the provisions that relate to allowing (or failing to prohibit) new and/or expansion and/or intensification and/or densification of LAMIRDs in the Comprehensive Plan (primarily in Chapters 3 and 12) and in the implementing regulations (primarily in SCC 14.08 and 14.16) (even by new community or joint planning) are in compliance with RCW 36.70A.020(1) regarding encouraging development in urban areas, RCW 36.70A.020(2) regarding discouraging sprawl, RCW 36.70A.020(10) regarding protecting rural environment and character, RCW 36.70A.040 regarding adopting a plan and implementing consistent regulations under Ch. 36.70A RCW, RCW 36.70A.070(preamble) regarding internal consistency, RCW 36.70A.070(1) regarding specification of extent of uses, densities and intensities, RCW 36.70A.070(5) regarding compliance with LAMIRD standards, and RCW 36.70A.130 regarding updating for full compliance with identified sections because LAMIRDs are generally a one time designation and cannot create new patterns of sprawl?
3. Whether the Comprehensive Plan is internally inconsistent with regard to the County's urban/non-urban growth allocation policy in violation of RCW 36.70A.070(1) because the allocations don't account for population growth in resource lands when they allocate 80% to urban areas and 20% to rural areas (e.g. Policy 3A-2.2)?
4. Whether the County has failed to implement CP Policies 3A-1.1 and 3A-2.2 in violation of RCW 36.70A.040, RCW 36.70A.120, and RCW 36.70A.130?

- 1 5. Whether the County has failed to comply with RCW 36.70A.115 and RCW
2 36.70A.215 regarding non-urban allocations because a land use needs and
3 capacity analysis is required for non-urban areas?
- 4 6. Whether the County has failed to clearly define urban and rural water service
5 and systems, and failed to clearly preclude inappropriate expansions of urban
6 water service and systems into the rural area in the Comprehensive Plan and
7 Development Regulations in violation of RCW 36.70A.010, RCW
8 36.70A.020(1), RCW 36.70A.020(7), RCW 36.70A.040(3), RCW
9 36.70A.070(preamble), RCW 36.70A.070(1), RCW 36.70A.070(5), RCW
10 36.70A.110(4), RCW 36.70A.120, RCW 36.70A.130, and RCW 36.70A.210?
- 11 7. Whether the designations and zones where the County has failed to designate
12 and zone natural resource lands that meet natural resource land designation
13 criteria such as lands in Sections 28, 29 and 33 in T33N, R4E, W.M. are in
14 violation of RCW 36.70A.020(2), RCW 36.70A.020(8), RCW 36.70A.040(3),
15 RCW 36.70A.060, RCW 36.70A.070(preamble), RCW 36.70A.070(1), RCW
16 36.70A.130, RCW 36.70A.170, and RCW 36.70A.210?
- 17 8. Whether the Long CaRD policies and implementing regulations fail to protect
18 rural character and to avoid urban development and growth outside UGAs in
19 violation of RCW 36.70A.020(1), RCW 36.70A.020(2), RCW 36.70A.040(3),
20 RCW 36.70A.060, RCW 36.70A.070(preamble), RCW 36.70A.070(1), RCW
21 36.70A.070(5), RCW 36.70A.110(1), RCW 36.70A.110(4), RCW 36.70A.120,
22 RCW 36.70A.130, RCW 36.70A.170, and RCW 36.70A.210? **This issue has
23 been abandoned.**¹²⁷
- 24 9. Whether CP Policy 3C-1.10 and its implementing regulations are in violation of
25 RCW 36.70A.020(1), RCW 36.70A.020(2), RCW 36.70A.040(3), RCW
26 36.70A.060, RCW 36.70A.070(preamble), RCW 36.70A.070(1), RCW
27 36.70A.070(5), RCW 36.70A.110(1), RCW 36.70A.110(4), RCW 36.70A.120,
28 RCW 36.70A.130, RCW 36.70A.170, and RCW 36.70A.210? **This issue has
29 been abandoned.**¹²⁷
- 30 10. Whether the County has failed to clearly distinguish between major and minor
31 water utility developments in the Comprehensive Plan and Development
32 Regulations in violation of RCW 36.70A.020(6), RCW 36.70A.040(3), RCW
36.70A.070(preamble) and RCW 36.70A.130(1)(d)?
11. Whether the County has failed to update the Comprehensive Plan including
documents in the Technical Appendices and Map Portfolio in violation of RCW

¹²⁷ FOSC Opening Brief, at 24.

36.70A.070(preamble) and RCW 36.70A.130? **This issue has been abandoned.**¹²⁸

12. Whether Ordinance # O20070009 fails to protect rural character by allowing large mineral extraction operations outside of resource lands (MRO) in rural lands in violation of RCW 36.70A.020(10), RCW 36.70A.070(preamble), RCW 36.70A.070(1), RCW 36.70A.070(5), RCW 36.70A.120, RCW 36.70A.130, and RCW 36.70A.210? **This issue has been abandoned.**¹²⁹

13. Whether any portion of Ordinance # O20070009, the Comprehensive Plan or Development Regulations found not to comply with the Act in Issues 1 to 12 above should also be found invalid under RCW 36.70A.302 for substantial interference with the fulfillment of Goals 1, 2, 5, 7, 8, and/or 10?

¹²⁸ FOSC Opening Brief, at 24.

¹²⁹ FOSC Opening Brief, at 24.